



An
Bord
Pleanála

Inspector's Report

ABP-310216-21

Development

Waste recovery and recycling facility.
A waste Licence will be obtained for the proposed waste recovery activities under the Waste Management Act, as amended. An Environmental Impact Assessment report (EIAR) and a Natura Impact Statement (NIS) has been furnished alongside the Planning Application.

Location

Graney West, Castledermot, Co. Kildare.

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

20639

Applicant(s)

Sancom Limited.

Type of Application

Planning Permission.

Planning Authority Decision

Grant Permission.

Type of Appeal

First Party

Appellant(s)

Sancom Limited.

Observer(s)

EPA.

Date of Site Inspection

25th January 2023.

Inspector

Elaine Sullivan

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1.0 Site Location and Description

- 1.1. The subject site has a stated area of 19.2 hectares and is located within the townland of Graney West, approximately 2km to the east of Castledermot and 12km to the west of Baltinglass, Co. Wicklow. The site has been in use as a sand and gravel pit and is accessed from the L8100 local road, to the north-east of the site. A single lane, un-made road from the L8100 leads to an area of hard standing and a courtyard surrounded by agricultural buildings and a house. Beyond this area and along the south-eastern boundary of the site are stockpiles of material and a pond which forms part of the closed system for washing aggregate. A second pond is located in the south-eastern corner of the site.
- 1.2. The main worked-out area of the pit is located to the north-west of the site and comprises an uneven landscape with voids and mounds of topsoil. Throughout the pit floor, the ground is being recolonised with scrub and vegetation. Land surrounding the site is in agricultural use and comprises grassed fields. Site boundaries comprise trees and hedgerows and the previous ground levels on the site are clearly evident from the surrounding lands. Ground levels across the quarry are stated as varying from 79m OD to 86.7m OD. Typical ground levels surrounding the quarry fall from 95m OD to 81m OD.
- 1.3. There are a number of one-off houses located along the local roads surrounding the site but only one house on the L8100 and approximately 462m to the north-east is visible from within the site.

2.0 Proposed Development

- 2.1. Planning permission is sought for a Material Recovery Facility at a worked-out quarry with a total site area of 19.2 ha. The fill area is 13.65 ha in size and the construction and demolition material recovery area is 4.4 ha in size.
- 2.2. The principal activity would involve the importation of uncontaminated soil and stone from construction sites to backfill and restore the quarry. Secondary activities on the site would include the intake and processing of construction and demolition, (C&D) waste for resale. The proposed development would include the following elements,

- The importation of a maximum of 1.8 million tonnes of uncontaminated soil and stone, sourced from construction sites over the course of 10 to 25 years, to backfill and restore the quarry voids.
- A C&D waste recovery facility that would provide for the intake and screening of top-soil for resale,
 - the intake and washing of gravel and sands for resale,
 - the intake and crushing of concrete, mixing with sand and gravel before being fed to the washing plant for resale,
 - the intake, shredding and composting of garden waste for use in agricultural spreading.

2.3. A maximum of 387,000 tonnes of construction and demolition related waste material would be accepted on site per annum over a 10-year period, (72,000 tonnes of soil and over burden and 207,000 tonnes of C&D waste).

2.4. A new site entrance would be constructed from the L4016, Castledermot to Baltinglass Road and a new internal access road would be constructed from the new entrance and across third party lands to the southern part of the site.

2.5. It is also proposed to install a weighbridge, wheel-wash, stockpile and sorting area, plant and equipment for material recovery, waste inspection and quarantine area, surface water treatment infrastructure and external lighting.

2.6. Existing plant, infrastructure and settlement pond on the site will be utilised. A bunded fuel storage area will be upgraded.

2.7. The development will require a Waste Licence which will be obtained from the EPA for the waste recovery activities under the Waste Management Act, as amended.

Amended Proposal

2.8. The development was revised under a request for further information from the PA when a query was raised as to whether or not the development qualified as Strategic Infrastructure Development under Schedule 7 of the Planning and Development Act 2000, (as amended) as it exceeded the threshold of 3(b), being '*An installation for the disposal, treatment or recovery of waste with a capacity for an annual intake greater than 100,000 tonnes*'. The PA requested that the applicant consider whether the

proposed development constituted development to which Section 37A of the Act relates, whereby An Bord Pleanála is the competent authority to make a decision.

2.9. The scheme was amended to reduce the quantity of materials to be accepted on the site on a yearly basis and to extend the life of the development. The original application anticipated that the backfilling and restoration of the quarry would be completed within the range of 10-25 years with the aspiration that it would be completed in 10 years. The revised application extended the length of time for the operations proposed to the upper level of 25 years.

2.10. The amended scheme allows for a maximum of 1.8 million tonnes of soil and stone to be accepted on site for backfilling over 25 years to achieve land restoration, with a maximum of 99,500 tonnes accepted per annum. This figure amounts to 72,000 tonnes of soil per annum for recovery through deposition and 27,500 tonnes for other C&D waste streams for recycling and resale. The breakdown of materials to be accepted on the site in the original and amended development is set out in the table below.

Waste Type	Original proposal PA (10yrs)	Revised Proposal PA (25 yrs)
Sub-soil & overburden	180,000	72,000
Top-soil	4,000	1,500
Sand & Gravel	100,000	12,500
Concrete	100,000	12,500
Garden Waste	3,000	1,000
Total	387,000	99,500

3.0 Planning Authority Decision

3.1. Decision

The PA granted permission for the development subject to 20 no. planning conditions, 7 of which are appealed by the applicant. The following conditions are subject to the appeal,

Condition No. 3 –

All the environmental and construction mitigation and monitoring measures, set out in the Environmental Impact Assessment Report and Natura Impact Statement, shall be implemented in full in accordance with the timelines set out, except as may otherwise be required in any Waste Licence issued by the Environmental Protection Agency in respect of the proposed development or as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity and to mitigate the environmental effects of the proposed development.

Condition No. 6 –

(a) The Developer shall provide a closed loop wheel wash system to the satisfaction of the Planning Authority. The wheel wash system shall be desludged on a regular basis by an authorised collector and the material removed to an authorised facility for recovery/disposal.

(b) A waste quarantine area shall be provided at the site.

(c) A weighbridge shall be provided at the site.

Reason: In the interest of clarity and public health and environmental sustainability.

Condition 10 –

Prior to commencement of the development, the Developer shall ensure that a 5070 mm depth of AC20 is laid across the width of the carriageway, from Castledermot to the Kildare County boundary with Wicklow. The Developer shall also ensure that Surface Dressing is laid with a 6mm pad coat followed by a double surface dressing 14mm/6mm (Design Summary 3) in accordance with IAT Guidelines for Surface Dressing in Ireland from Castledermot to the Kildare County boundary with Wicklow.

Reason: In the interest of road safety.

Condition 12 –

Prior to use as a Material Recovery Facility, the Developer shall construct a new access route generally in accordance with drawings G1210-02 and G1210-04 received by the Planning Authority on 8th February 2021. The works shall include the following: HRA surfacing at the junction with the L4016; a wheel wash, oil interceptor; signage and shuttle light system.

Reason: In the interest of road safety.

Condition 13 –

Prior to use as a Material Recovery Facility, the Developer shall carry out a Road Safety Assessment (RSA) Stage 3, by the independent accredited Road Safety Auditor, to examine the internal haul route. The Developer is requested to include agreed recommendations from the RSA in the amended constructed works for both the internal development and the new junction with L4016.

Reason: In the interest of road safety.

Condition 18 –

(a) Prior to commencement of development, the Developer shall provide full design details and specifications of the lighting system, necessary to serve the access route to the quarry, and submit this for the written agreement of the Planning Authority and the Public Lighting Engineer's Office. The proposed lighting system shall comply with the requirements set out in Kildare County Council's Street Online Lighting Technical Specification.

(b) At the new junction at the main road, the Developer shall examine the public lighting for 100 metres on either side of the new entrance.

(c) The Developer shall ensure that the approved lighting is fully commissioned prior to use of the facility.

(d) The Developer shall comply with any future requirements of the Planning Authority in relation to: adjusting the floodlight aiming or fitting appropriate additional louvers, to deal with remaining glare issues that may arise for road users/nearby residents/rural habitat and may only become apparent when the installation is commissioned.

Reason: In the interest of road safety and to protect the amenities of the area.

Condition 20 –

The Applicant/Developer to pay to Kildare County Council the sum of €202,500.00 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 5th November 2015 in accordance with Section 48 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with Section 13 of Development Contribution Scheme adopted by Kildare County Council on 5th November 2015.

Note: Please note water and wastewater development contribution charges now form part of the water connection agreement, if applicable, with Irish Water.

Reason: It is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The decision of the PA was informed by two reports by the Planning Officer, (PO). The first report dated the 11th August 2020 recommended that further information be requested with regard to 19 points. One of the points referred to the scale of the development, whereby the PA considered that with an input of 387,000 tonnes per annum, it comprises Seventh Schedule development as it exceeds the threshold being – *‘An installation for the disposal, treatment or recovery of waste with a capacity for an annual intake greater than 100,000 tonnes’*. Therefore, the proposed development is potentially development to which Section 37A of the Act relates. An Bord Pleanála is the competent authority to make a decision with regards to this. Section 37B(7) of the Planning and Development Act states that no application in respect of Seventh Schedule development shall be made to the Planning Authority unless a notice is served under subsection 4(b) stating that it is not strategic infrastructure development.

3.2.2. The applicant responded to the request for further information on the 8th February 2021. In the submission the applicant amended the scale of the proposal and restricted the material to be accepted on the site to 99,500 tonnes per annum over a period of 25 years. A second report by the PO dated the 13th April 2021 assessed the information submitted by the applicant and recommended that planning permission be granted subject to 19 conditions. Some of which form the basis of the appeal.

3.2.3. Other Technical Reports

- **Roads and Transportation** – The report dated the 10th August 2020 requested that further information be requested with regard to the condition of local roads, internal access routes, road safety, noise and cycle facilities.
- **Kildare Fire Service** – No objection.

- **Heritage Officer** – The report dated the 29th July 2020 states that the EIAR adequately considered the impact of the proposed development on the receiving environment in terms of archaeology and ecology. The NIS was also reviewed. There is no objection to the development subject to planning conditions which include mitigation measures outlined in the EIAR and NIS.
- **Athy Municipal District – Roads Department** – The report dated the 24th July 2020 recommends that further information be requested. The report dated the 18th February 2021 has no objection to the development subject to planning conditions.

3.3. Prescribed Bodies

- **Environmental Protection Agency, (EPA)** – The response dated the 21st July 2020 states that the development may require a licence under the Waste Management Act 1996, as amended. The Agency has not received a licence application relating to the development. Should a licence application be received by the Agency, all matters to do with emissions to the environment from the activities proposed will be considered and assessed by the Agency. In accordance with Section 42 (1D)(d) of the Waste Management Acts, the Agency cannot issue a Proposed Determination on a licence application relating to the development until a planning decision has been made.
- **Transport Infrastructure Ireland, (TII)** – No objection. TII requests that the Council has regard to the provisions of Chapter 3 of the DoECLG Spatial Planning and National Roads Guidelines in the assessment and determination of the application.

3.4. Third Party Observations

- No observations were received by the PA.

4.0 Planning History

On the subject site:

PA Ref. 18/196 – Application withdrawn on foot of a request for further information, for the development of a waste recovery facility on a site of 7.33ha. The principal activity

proposed was the deposition of waste soil and stone at the quarry for the purposes of backfilling to restore a void created by the excavation of materials. The proposed quantity of such material to be accepted and infilled would be less than 17,500 tonnes per annum with an anticipated total of 100,000 tonnes throughout the operational phase of the activity. Secondary waste streams from construction and garden activities would also be accepted on the site and processed for resale. Further information was requested by the PA on 35 points and the application was withdrawn by the applicant.

PA Ref. 06/2802 - Planning permission granted by the PA on the 2nd day of June 2009 for the continued operation for the extraction of sand and gravel and all associated processing works including 3 no. mobile screening and washing units ,1 no. batching house and conveyors, 2 no. cement towers, bunded storage areas for concrete additive etc.

PA Ref. QY53 (EPA Reg. No. QS1207) – Registration of the sand and gravel pit in accordance with Section 261 of the Planning and Development Act 2000, as amended.

PA Ref. UD6530 – Planning enforcement file opened on the 19th June 2014 regarding the unauthorised use of the quarry for motorbike racing / scrambling. Case file reassigned on the 8th June 2018 and is now closed.

In proximity to the site and of relevance to the appeal:

ABP-310-989-21,(PA Ref. 20/1586) – Appeal before the Board relating to conditions attached to a planning permission granted by Kildare County Council on the 6th July 2021 for the use of pit floor for open storage of aggregate stockpiles following expiry of permission, spreading of existing site with soils to result in return to agricultural use. Associated civil works which includes grading of pit floor and banks, and the re-commissioning and use of the wheelbath. The appeal relates to Conditions 2, 17, 21, 23, 24 and 25. Of particular note are Conditions 17, 21, 24 and 25 which are similar in nature to those in the subject appeal and state the following;

Condition 17 - Prior to commencement of the development, the Developer shall ensure that a 5070 mm depth of AC20 is laid across the width of the carriageway, from Castledermot to the Kildare County boundary with Wicklow. The Developer shall also ensure that Surface Dressing is laid with a 6mm pad coat followed by a double surface dressing

14mm/6mm (Design Summary 3) in accordance with IAT Guidelines for Surface Dressing in Ireland from Castledermot to the Kildare County boundary with Wicklow.

Reason: In the interest of Road Safety.

Condition 21 - Prior to use of the facility, the developer shall have a Stage 2 and 3 Road Safety Assessment (RSA) carried out by an independent, approved, Road Safety Auditor. The Developer shall ensure that mitigation measures identified in the RSA are put in place prior to commencement of operations.

Reason: In the interest of Road Safety.

Condition 24 - As some of the hours of operation may be at dusk or darkness in wintertime; prior to commencement of development, the Developer shall provide full design details and specifications of the lighting system, necessary to serve the development, and submit this for the written agreement of the Planning Authority and the Public Lighting Engineer's Office. The proposed lighting system shall comply with the requirements set out in Kildare County Council's Street Online Lighting Technical Specification. At the new junction at main road, the Developer shall examine the public lighting for 100 metres on either side of the new entrance.

The Developer shall ensure that the approved lighting is fully commissioned prior to use of the facility.

Reason: In the interests of road safety

This appeal has not yet been decided by the Board.

4.1. **Policy Context**

4.2. **National & Regional Policy**

4.2.1. The following plans, policies and guidelines are of relevance to the proposed development and have been considered in the assessment;

- **Climate Action Plan 2023**
- **A Waste Action Plan for a Circular Economy – Ireland's National Waste Policy 2020-2025**

- **National Planning Framework – Project Ireland 2020**
- **Eastern and Midland Regional and Spatial Economic Strategy,**
- **Eastern Midland Waste Management Plan 2015-2021**
- **Guidelines for Planning Authorities and An Bord Pleanala on carrying out Environmental Impact Assessment, August 2018.**
- **Quarries and Ancillary Activities - Guidelines for Planning Authorities 2004**

4.2.2. The following guidance is of particular relevance to the appeal,

Development Management Guidelines for Planning Authorities, (2007).

Chapter 7 – Drafting Planning Conditions

Planning conditions should be:

- Necessary – i.e. whether, without the condition, either permission for the development would have to be refused, or the development would be contrary to the proper planning and sustainable development in some identifiable manner.
- Relevant to planning – the requirements of a condition should be directly related to the development to be permitted or the condition may be ultra vires and unenforceable.
- Relevant to the development permitted
- Enforceable – conditions should be effective and capable of being complied with.
- Precise – every condition should be precise and understandable.
- Reasonable - a useful test of reasonableness may be to consider whether a proposed condition can be complied with by the developer without encroachment on land that he or she does not control, or without otherwise obtaining the consent of some other party whose interests may not coincide with his/hers.

Section 7.8.4 – Conditions relating to Environmental Protection Agency licensable activities.

Under section 99F of the Environmental Protection Act 1992 as inserted by section 15 of the Protection of the Environment Act 2003, the planning authority and the Board, in granting permission for an activity licensable by the Environmental Protection Agency, may not impose conditions relating to the control of emissions from the activity, or to the control of emissions following the cessation of the operation of the activity. The construction aspects of the development can however be regulated by the planning authority.

4.2.3. **OPR Practice Note PN03 – Planning Conditions**

The OPR practice note on planning conditions was issued in October 2022 and contains information and guidance for planning authorities on how to draft standard planning conditions.

Section 3.8 – Conditions Requiring Development on Lands Outside the Control of the Applicant

Conditions requiring development to be carried out on lands outside the control of the applicant prior to the commencement of development, or prior to the occupation of the development, cannot be complied with by the developer and so are not enforceable. Such conditions should not be imposed.

Section 3.12 – Conditions Relating to Other Codes Where a Licence from the EPA is required.

In general, conditions should not be imposed covering issues for which another consent or licence is required e.g., conditions controlling emissions from activities for which an Industrial Emissions Licence, an Integrated Pollution Control (IPC) Licence or a Waste Licence from the Environmental Protection Agency (EPA) is required.

Conditions regulating emissions from the licensable activities or wastewater discharges authorised by the EPA are not permissible in the planning decisions on such cases and conditions dealing with these matters should not be imposed.

3.13 – Environmental Impact Assessment Report (EIAR) Mitigation Measures

Particular care is necessary, when requiring, by way of condition, that mitigation measures recommended in the EIAR shall be complied with.

It is common that the mitigation measures recommended in EIARs have not been drafted having regard to the six basic criteria for planning conditions set out in Figure 1.1 above. (i.e. to be Necessary, Relevant to planning, Relevant to the development, Precise, Enforceable and Reasonable).

3.14 – Appropriate Assessment (AA) Mitigation Measures

Article 6(3) of the Habitats Directive (92/43/EC) requires that a competent authority, a planning authority, shall permit development only after having ascertained that it will not adversely affect the integrity of the site concerned. It is particularly important that mitigation measures, required to prevent any adverse effect on the integrity of a European Site, are clearly set out and, if any details in relation to such measures are left for later agreement the planning authority, must be: OPR Practice Note PN03 19 “...certain that the development consent granted establishes conditions that are strict enough to guarantee that those parameters will not adversely affect the integrity of the site”.

4.3. Kildare County Development Plan

- 4.3.1. The subject site is located within the administrative boundary of Kildare County Council and the Kildare County Development Plan 2023-2029, (KCDP), is the operative Development Plan for the county.
- 4.3.2. The application was assessed by Kildare County Council in accordance with the policies and objectives of the Kildare County Development Plan 2017-2023, which was the operative Development Plan at the time.
- 4.3.3. On review of the contents of both plans I note that there are no material changes between the 2017 County Development Plan and the 2023 County Development Plan as they relate to the appeal site and the current proposal
- 4.3.4. The subject site is located outside of any settlement boundary, on unzoned land in a rural area. There are no specific designations or protections that relate to the site and the surrounding lands. The following sections of the Kildare County

Development Plan, (KCDP), 2023-2029 are of relevance to the proposed development;

Chapter 6 – Infrastructure and Environmental Services

6.8.1 – Waste Management

Policy -

IN P6 – It is a policy of the Council to - Implement European Union, National and Regional waste related environmental policy, legislation, guidance, and codes of practice, in order to support the transition from a waste management economy towards a circular economy.

Objectives –

IN O39 - Encourage a just transition from a waste economy to a green circular economy in accordance with 'A Waste Action Plan for a Circular Economy 2020-2025 and the Whole of Government Circular Economy Strategy 2022-2023 'Living More, Using Less'.

IN O40 - Provide, promote, and facilitate high quality sustainable waste recovery and disposal infrastructure / technology in keeping with the EU waste hierarchy to cater for anticipated population growth and the business sector in the County.

6.8.2 – Pollution Control – Water, Air, Noise and Light

Objectives –

IN O65 - Ensure that noise levels caused by new and existing developments throughout the county do not exceed normally accepted standards.

IN O68 - Require the design of external lighting schemes to minimise the incidence of light spillage or pollution into the surrounding environment having regard to the residential amenity of surrounding areas and the need to mitigate adverse impacts on sensitive fauna and protected species.

Chapter 9 – Our Rural Economy

9.9.1 – Post Closure of Extractive Industry

Objectives –

RD 046 - Require road re-instatement work to be on-going during operations, in the interests of road and traffic safety. Works undertaken to re-instate/improve the public road should be undertaken by the quarry developer or paid by them and completed by the Council

RD O50 - Ensure the satisfactory and sensitive re-instatement and/or re-use of disused quarries and extraction facilities, where active extraction use has ceased. Future uses should include amenity, recreation and biodiversity areas shall be informed by an assessment of the specific site/lands and shall be subject to an ecological impact assessment or other environmental assessments as appropriate. Where it is proposed to reclaim, regenerate, or rehabilitate old quarries by filling or re-grading with inert soil or similar material, or to use worked-out quarries as disposal locations for inert materials, the acceptability of the proposal shall be evaluated against the criteria set out in Section 15.9.6 of this Plan. The Council will resist development that would significantly or unnecessarily alter the natural landscape and topography, including land infilling/ reclamation projects or projects involving significant landscape remodelling, unless it can be demonstrated that the development would enhance the landscape and / or not give rise to adverse impacts.

Chapter 12 – Biodiversity & Green Infrastructure

Policy –

BI P1 – Integrate in the development management process the protection and enhancement of biodiversity and landscape features by applying the mitigation hierarchy to potential adverse impacts on important ecological features (whether designated or not), i.e. avoiding impacts where possible, minimising adverse impacts, and if significant effects are unavoidable by including mitigation and/or compensation measures, as appropriate. Opportunities for biodiversity net gain are encouraged.

Chapter 13 – Landscape, Recreation & Amenity

The subject site is located in the Eastern Transition Landscape Character Area as defined in the Landscape Character Assessment in the KCDP 2023-2029. This area is categorised as having a Class 2 – Medium Sensitivity rating. These areas have the capacity to accommodate a range of uses without significant adverse effects on

the appearance or character of the landscape having regards to localised sensitivity factors and also have a high compatibility for uses related to extraction.

Objectives –

LR O14 - Maintain the visual integrity of Eastern Transition Lands which have retained an upland character.

Chapter 15 – Development Management Standards

15.10 – Waste Disposal and Recovery

Section 15.10.1 sets out the requirements of the PA for planning applications for Waste Recovery/ Disposal Facilities.

Section 15.10.2 notes that Construction & Demolition waste management is now a priority objective under the new National Waste Management Plan for a Circular Economy.

4.4. Natural Heritage Designations

- No designations apply to the subject site.

4.5. EIA

- 4.5.1. This application falls under Directive 2014/52/EU on the assessment of the effects of certain public and private projects on the environment (i.e. the 2014 EIA Directive). Projects for the purposes of EIA are identified in Schedule 5 of the Planning and Development Regulations 2001 (as amended) and the proposed development which proposes establishing and operating a Material Recovery Facility at a worked-out quarry in Graney West, Kildare. The principal activity will involve the importation of inert material from construction sites to backfill the quarry voids. Secondary operations on the site will involve waste recovery activities that will involve the treatment of construction, demolition and garden waste and the screening of topsoil for resale.
- 4.5.2. The initial proposal for the development was for the importation of sub-soil and overburden to backfill the quarry voids that would amount to 1.8million tonnes over 10-25 years. In addition to this, it was proposed to accept, 100,000 tonnes of sand

and gravel, 100,000 tonnes of concrete, 4,000 tonnes of topsoil and 3,000 tonnes of organic waste per annum for processing and resale.

4.5.3. The proposal was revised during the further information stage. The amended proposal would allow for a maximum of 1.8 million tonnes of soil and stone to be accepted on site for backfilling over a 25 -year period. A maximum of 99,500 tonnes of waste would be accepted onto the site and would comprise 72,000 tonnes of soil for backfilling with an additional 27,000 tonnes of C&D waste for recycling and resale.

4.5.4. Under Schedule 5, Part 2, 11(b) of the Planning and Development Regulations 2001 (as amended), the following class of development is subject to Part X, Section 176 of the Planning and Development Act 2000 (as amended) which requires a mandatory Environmental Impact Assessment;

Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.

4.5.5. Given that the proposed development involves an annual intake of more than 25,000 tonnes of soil and stone (waste) per annum over a 5-year period, the proposal is above the threshold of development set out under Schedule 5, Part 2, 11(b) of the Regulations. Thus, there is a mandatory requirement for the planning application to be accompanied by an Environmental Impact Assessment Report. The applicant has submitted an Environmental Impact Assessment Report (EIAR), with the application. However, it was prepared with for the initial proposal which allowed for a more intensive development.

4.5.6. The applicant's submission to the PA revising the development proposal under further information states that the EIAR was reviewed, and it was determined that *'the content and conclusions of the following EIAR chapters remain valid having regard to the reduced quantum of waste to be received on the site on a yearly basis.*

- *Population and Human Health*
- *Biodiversity*
- *Soils and Geology*
- *Hydrogeology and Geology*

- *Air and Climate*
- *Material Assets*
- *Cultural Heritage*
- *Landscape.*

However, it is still likely that certain impacts will have a reduced magnitude/significance, (e.g. dust related impacts), owing to the reduced intensity of the operations’.

4.5.7. The applicant’s Environmental Impact Assessment Report (EIAR) comprises two volumes, a Non-Technical Summary, and the main report providing a technical assessment of environmental effects. I have carried out an examination of the information presented by the applicant, including the EIAR and the submissions made during the course of the application and appeal. A summary of the submissions made by the planning authority, prescribed bodies and observers is set out above. The main issues raised specific to EIA are impacts on:

- Residential amenity.
- Landscape.
- Biodiversity (Sand Martin, Badger and Otter).
- Ground and surface water.

4.5.8. These issues are addressed below under the relevant headings, and as appropriate in the reasoned conclusion and recommendation, including conditions. I am generally satisfied that the EIAR has been prepared by competent experts to ensure its completeness and quality and that the information contained in the EIAR and supplementary information provided by the developer, adequately identifies and describes the direct, indirect and cumulative effects of the proposed development on the environment and complies with the requirements of Section 94 of the Planning and Development Regulations, 2001 (as amended).

Difficulties Encountered

4.5.9. No significant difficulties were encountered by the design team in the preparation of the EIAR.

Alternatives

- 4.5.10. As the proposal is specific to the site and involves the backfilling of a quarry, no alternative locations were considered.
- 4.5.11. A 'Do-Nothing' scenario was also considered. This option would result in the quarry voids becoming a permanent part of the landscape and quarry operations would continue on-site under the current permission. The restoration of the quarry would not take place and the market for soil and sub-soil removal services for the construction and demolition sector in the region might be negatively affected.

Population and Human Health

- 4.5.12. Chapter 6 of the EIAR, titled Population and Human Health, assesses the impact of the proposed activities on the surrounding human environment, communities and individuals. The EIAR acknowledges that the proposed activity has the potential to impact on human beings in a number of ways and may have impacts on population, health and safety, tourism, recreation, air quality, noise, traffic and economic activity.
- 4.5.13. Given the nature and scale of the proposed development, I am satisfied that it will not result in any significant impact on population. There will be some additional benefit during the construction and operational phase through a slight increase in employment. However, the numbers employed in both stages will not be significant.
- 4.5.14. Residential development nearby will experience some impacts in terms of amenity and human health. Section 6.4.1 of the EIAR also states that the restoration of the quarry voids on the site and the use of the land for agricultural use will have a long-term positive impact on the local environment. The subject site is located in a rural area with dispersed rural housing along the roads surrounding the site. There are 12 detached houses within a 500m radius of the site boundary. The closest house to the site is approximately 110m to the north. This house is also in proximity to the site existing access road from the L8100 local road.
- 4.5.15. The development has the potential to impact on human health in terms of dust emissions, noise emissions, HGV movements to and from the site and internal operations in the site such as plant and machinery, backfilling operations, the recovery of construction and demolition waste and plant operation. Some of the impacts identified in this section are also addressed in specific chapters of the EIAR.

The impacts from noise, dust and traffic are assessed under Chapters, 10, 11 and 13, respectively. Visual amenity is addressed in detail in Chapter 15. These chapters will be assessed in detail below.

- 4.5.16. The results of the assessments carried out in Chapters 10 and 11 with regard to the impacts of dust and noise conclude that proposed mitigation measures to deal with dust and noise will minimise the impacts and will ensure that there are no adverse effects on any sensitive receptors. The results of the Visual Impact Assessment carried out in Chapter 15 conclude that with the implementation of mitigation measures, the proposal will not have an adverse visual impact on any sensitive receptors in the area and will have a long-term positive impact when the site is restored. Potential exists for impacts such as light spill and glare from external lighting within the site. The EIAR recommends that mitigation measures be incorporated into the lighting design to minimise light spill and glare.
- 4.5.17. Indirect impacts from the development would be limited to potential surface water discharges which could result in a negative impact on water quality in the River Graney, and downstream water bodies which lead to the River Barrow and River Nore SAC. Surface water impacts are examined in detail in Chapter 9 of the EIAR. A Stage 2 Appropriate Assessment has also been prepared for the development and is assessed in full in Section 6.7 of this report. No cumulative impacts were identified.

Biodiversity (Ecology)

- 4.5.18. Chapter 7 of the EIAR addresses Biodiversity. The subject site is a worked-out quarry which has previously been used for motorcycle racing. The ground is disturbed and consists mainly of bare, exposed soil mixed with areas of recolonising vegetation. The site is surrounded by agricultural fields. Thirteen habitat types were identified and recorded on the site and are listed in Table 7-4 of the EIAR. None of the habitats identified were identified as having Regional or National importance and none of the habitats were listed for protection. The site mostly comprises 'Exposed sand gravel or till / Recolonising bare ground'.
- 4.5.19. The subject site is not located in, or adjacent to, any designated Natura 2000 sites. There are three Natura 2000 sites located within a 15km radius, (the potential zone of influence), of the subject site; the River Barrow and River Nore SAC (002162), the

Slaney River Valley SAC (000781) and the Holdenstown Bog SAC (001757). A Stage 1 Screening for Appropriate Assessment was carried out for the site and identified that the River Barrow and River Nore SAC and the Slaney River Valley SAC could be significantly impacted by the proposed works. On foot of this finding, a Stage 2 Natura Impact Statement was prepared and submitted with the application.

- 4.5.20. There are 9 proposed Natural Heritage Areas, (pNHA's), within 15km of the site and no NHA's. Three of the pNHA's are located within a Natura 2000 site. All pNHA's were assessed for potential impacts from the development and it was found that they would not have any impact on these areas given the lack of pathways and the sensitivities of the qualifying interests.
- 4.5.21. Two ecological walkover surveys were carried out for the EIAR. The first survey was carried out in January 2019 and the second was carried out in March 2019. The second survey included a preliminary ground level assessment of bat roost suitability, an otter survey, a badger survey, an invasive species survey and a preliminary sand martin survey. Evidence of badgers and sand martins was found within the site and evidence of otters was found along the River Graney which is in close proximity to the site. All of these species are protected under the Wildlife Acts, 1976 & Wildlife (Amendment) Act, 2000. Sand Martin is an amber-listed species in Birds of Conservation Concern in Ireland and otters are listed as a Qualifying Interest for the River Barrow and River Nore SAC and the Slaney River Valley SAC.
- 4.5.22. No Flora Protection Order (FPO), species were recorded on the site but two invasive species were identified; the non-native species Butterfly-bush, *Buddleja davidii* and Japanese Knotweed, *Reynoutria japonica*. The Butterfly-bush is rated as a Medium Impact invasive species and was found at several locations within the site. Japanese Knotweed is a High Impact species and is listed in the Third Schedules of the European Communities (Birds and Natural Habitats) Regulations, 2011 (S.I. No. 477 of 2011) and in Section 52(7) and (8) of the Wildlife Act, 1976, (as amended). It is a legal requirement to eradicate this species prior to work commencing and an Invasive Alien Species Management Plan is required. Specific mitigation measures are outlined in Section 7.5.2.6 and the EIAR notes that any on-site or off-site removal must be licenced and carried out under expert supervision.

Breeding Birds -

- 4.5.23. Potential nesting sites for sand martin were identified in four places in the south end of the quarry. A dedicated survey carried out in June 2019 found that one of the four sites was occupied by nesting sand martins and held 33 potential burrows. Four of the burrows were occupied at the time of the survey and several sand martins were observed in flight.
- 4.5.24. Potential impacts on breeding birds include disturbance from noise, dust deposition and subsequent changes in habitat composition, negative biophysical effects to vegetation availability, and loss of habitat. The re-grading of the ground surface in the south end of the quarry would result in the loss of the nesting habitat at this location. Unmitigated impacts would result in disturbance of breeding bird populations during the breeding season, (March- September), and could result in the loss of individuals and/or young birds. The reduction in available nesting sites could also result in a decreased breeding success. Mitigation measures are required to ensure that the Amber-listed species does not suffer from any long-term negative impacts.
- 4.5.25. Mitigation measures for all breeding birds are set out in Sections 7.5.2.4 and 7.5.3.5 of the EIAR. The measures outlined include restricting any vegetation clearance works to outside the nesting season. If this is not possible, a breeding bird survey will be carried out by a qualified ecologist. If nests are found, they will be safeguarded with an appropriate buffer, until the chicks have successfully fledged. During the operational phase the topsoil will be replanted with grassland vegetation as the backfill progresses and the thickening of scrub and treeline around the site will provide additional foraging and nesting habitat.
- 4.5.26. Specific measures for sand martins include restricting any re-grading works to the nesting areas to the winter months. As the entire habitat will be removed, a replacement habitat will be required. The creation of an artificial bank of hollow concrete blocks with ceramic or clay pipes for burrows is proposed. Sand martins are opportunistic, and the replacement burrows should allow them to remain in the area following removal of the existing habitat. The replacement habitat should be retained for the duration of the project and after the final restoration has taken place. The residual impact will be a slight negative impact due to temporary disturbance.

Bats-

- 4.5.27. All bats are protected by the Wildlife Acts and the EU Habitats Directive (92/43/EEC). A ground level daytime assessment of bat roost suitability was carried out in March 2019 to identify potential roosts and access points to trees. The survey showed that there was a low to moderate bat roost potential in eleven trees in the treeline along the north and west boundaries. This habitat is also suitable for commuting and foraging and is connected to the wider landscape. A night-time survey to record bat activity on and around the site was not carried out. However, there are no trees within the site and the ground surveys were carried out early in the year when climatic conditions are not conducive to bat activity.
- 4.5.28. Impacts on bats would result from disturbance during the construction phase and operational phase as no trees would be removed as a result of the development. The EIAR notes that any bats using the site would be used to a certain level of noise from the operational quarry. Additional lighting during the operational phase could disturb bats by illuminating commuting and foraging habitats and would require mitigation measures. Section 7.5.3.3 of the EIAR sets out the details of the lighting to be used along the access road. I note that the subject appeal relates to the requirement of the PA for public lighting for the development. The applicant argues that public lighting is not required for the development. Mitigation measures include restricting light and turning off all lighting units during the backfilling process during key hours of emergence and foraging for bats, (dusk and night-time). Lighting specifications will be chosen based on the tolerance levels of bats.

Otter –

- 4.5.29. Otters are protected under the Wildlife Act and are listed on Annex II and Annex IV of the EU Habitats Directive. They are also listed as a Qualifying Interest for the River Barrow and River Nore SAC and the Slaney River Valley SAC. An indirect connection to the River Barrow and River Nore SAC exists through the River Graney, which is located within 100m of the southern boundary of the site and flows from east to west to connect with the River Lerr and on to the River Barrow. Evidence of otters was found along the River Graney, close to the proposed crossing of the new access route, which indicates that the river is used by otters.

- 4.5.30. Impacts on otters in the area would be from pollution of the water courses and fragmentation of the habitat from the proposed new access road with the potential for mortality on the road. The impacts could be considered to have a medium to long-term moderate negative impact on otter at a local level. Disturbance would also occur during the construction phase.
- 4.5.31. Mitigation measures to protect otters and aquatic fauna include implementing best practice on-site measures to protect surface waters and to reduce risks associated with accidental spills and run-off effects during the construction phase and operational phase. These measures are fully set out in Sections 7.5.2.1 and 7.5.3.2 of the EIAR. Specific measures to protect otters would include the incorporation of mammal ledges under the bridge for the proposed access road where it crosses the River Graney. A mammal resistant fence will also be installed along this section of the road for a distance of 50-100m to prevent otters and other mammals from crossing the road.

Badger –

- 4.5.32. Badger setts were observed within the south-western boundary of the site. Two out of seven burrows observed, showed signs of recent activity and snuffle holes were found across the site. Potential impacts for this species may occur during the construction stage if badger setts or supporting habitats were disturbed or destroyed. Such disturbances could negatively affect the badger population in the area through increased noise and human activity. Loss of foraging and breeding habitat would likely have a short-term moderate, moderate, negative effect on the species at a local level. It is noted that although the site is good for supporting badgers, it is a minor proportion of available habitat, (hedgerow, grassland), in the surrounding area. Unmitigated impacts would result in a minor, short-term impact to the local population.
- 4.5.33. Mitigation measures specific to badgers are set out in Sections 7.5.2.3 and 7.5.3.4 of the EIAR. The measures include the implementation of a protection zone of dense native shrubs will be installed for 30m around the badger setts during the construction and operation stages. Heavy machinery will be restricted from operating in this area and lighter machinery will be restricted to a 20m distance from setts. Manual disturbance by digging or hand clearance will not take place within

10m of a sett entrance. During the breeding season (December to June) none of the above works will take place within 50m of the active setts. Derogation from these measures will require a licence.

Aquatic Habitats -

- 4.5.34. The subject site is located within the Water Framework Directive (WFD) catchment area for the River Barrow, and the WFD sub-catchment for the River Lerr. The waterbody that runs adjacent to the site is a tributary to the River Graney, which is identified as being 'At Risk' and is one of 190 prioritised areas for action with collaboration with the Government and the dairy industry. The main pressures on the Lerr sub-catchment, (Lerr_SC_010) are agriculture (pasture) and the channelisation of rivers.
- 4.5.35. Mitigation measures for the prevention of pollutants and sediment to enter the water courses during the construction and operation phases are outlined in Section 7.5.2.1 and 7.5.3.1 of the EIAR. The measures include standard health and safety measures to be implemented on the site and also some additional measures specific to the development.
- 4.5.36. Having regard to the above, I am of the opinion that, adequate measures are proposed to avoid key ecological receptors. With the implementation of the proposed mitigation measures, potential effects are of low magnitude in the temporary to short-term, and therefore insignificant. Landscaping plans have been prepared for the short-term, construction and operational phase and for the long-term, reinstatement of the site. Prior to the commencement of development, tall trees will be planted along the western site boundary. This will help to enhance biodiversity on the site and the long-term reinstatement will restore the original habitats. I conclude that there are no habitats or species whose conservation requires refusal of planning permission in this case and furthermore that the impacts are proportional and acceptable.

Land, soil, water air and climate

Land, Soils and Geology

- 4.5.37. Chapter 8 of the EIAR assesses the impact of the proposal on the geological environments and geology of the proposed development. The existing site

comprises worked-out quarry voids where sand and gravel have been extracted leaving mineral sub-rock / rock exposed at the ground surface. The bedrock geology beneath the site is Tullow Type 2 Granite with a depth ranging from 9.15 to 12.3m. There are no mapped bedrock outcrops within the site boundary. The site is underlain by limestone gravels which extend to the west, north and east with a narrow band of alluvium along the southwestern site boundary, (in the area of the settlement lagoons), which is separate to the River Graney alluvium. Previous investigations found that the ground conditions generally comprise firm brown sandy clay overlying fine sand and dense medium gravels with large cobbles.

- 4.5.38. The present site is almost completely stripped of soil cover to allow the excavation of sand and gravel. There is no evidence of contamination by waste or material on the site and based on historical information, contaminated soils or buried waste are not anticipated at the site. Information gathered from the EPA shows that the subject site is located within a High Radon Area. No Geohazards such as landslides or seismic activity have been recorded at or near the site.
- 4.5.39. Other than some soil stripping and vegetation removal there will be no impact to the current soils and geology across the site. Potential impacts from the construction and operational phase would include excavation works. These works would not be deep enough to disturb bedrock and the subsoils are already exposed from previous quarry works. Some additional works will be required for the construction of a new road, the creation of a permeable car park and the regrading of the ground level in the sorting and stockpiling area. There may be a risk of soil contamination from vehicular traffic on the site and fuel storage and fuel usage. Accidental spillages of fuel, oils or other contaminants could result in short to long-term, moderate to significant impacts on subsoils depending on the extent of the event. The importation of unsuitable or contaminated soil also poses a risk to the groundwater aquifer and surface waters within the site.
- 4.5.40. Mitigation measures to deal with all of the potential impacts are outlined in Section 8.6 of the EIAR. I am satisfied that the mitigation measures outlined for the preparation and operational phases are sufficient to prevent any significant negative impacts on the underlying soils and geology of the proposed development.

Water -

4.5.41. Chapter 9 of the EIAR sets out the baseline conditions of the site for hydrogeology and hydrology.

Hydrogeology

4.5.42. The subject site and Graney West is located within the New Ross Groundwater Body, (GWB), which is comprised of both moderately productive and unproductive aquifers. The site itself is underlain by granite bedrock, which is classified as a Poor Aquifer, which is generally unproductive. To the north, west and east of the site the bedrock is described as a Locally Important Aquifer, granite bedrock which is moderately productive only in local zones. Under the Water Framework Directive, the New Ross GWB has been given a status of 'Good', with a future projection of 1b – probably at risk.

4.5.43. According to the GSI the groundwater vulnerability classification for the site is High (H), likely based on the presence of high permeability sand and gravel subsoils. As the soils and vegetation have been removed from the quarry pit, the majority of rainfall will recharge the underlying sand/gravel aquifer. Previous investigations indicated groundwater levels of between 78.9 – 80.4m OD with groundwater flowing in a westerly direction across the site and towards the Graney River.

4.5.44. The majority of households within the vicinity use mains water supply. The nearest domestic abstraction well was found to be 50m north of the site boundary. There are no Source Protection Areas, (areas surrounding individual groundwater sources), or public water schemes within 3km of the site. No karst features have been identified within 10km of the site.

4.5.45. Groundwater testing carried out in 2019 found slightly elevated levels of aluminium but heavy metals and inorganics were within threshold levels. Slightly elevated levels of nitrogen were recorded, which is attributed to the agricultural activity / use of the surrounding land. A trace level of Phenanthrene was recorded in the downgradient well. Low levels of hydrocarbons were found in the northern area of the site and downgradient to the former fuel storage area. All Volatile Organic Compounds (VOC's) were below the laboratory limit of detection.

Hydrology

- 4.5.46. Surface water flows from the north of the site to the south, towards the River Graney, which flows into the River Lerr and then to the River Barrow. The EIAR states that during heavy rainfall, runoff has been observed to flow towards the abstraction sump pond in the east of the site, or, south towards the ponds in the southern region of the site. During periods of extended and high rainfall the pond in the southwestern region of the site overflows and discharges into the Graney River via a discharge pipe. This arrangement was identified as unsatisfactory by the PA. In the response to further information, the applicant proposed to discontinue this process and to block the discharge pipe. As noted above, the River Graney is classified as having a 'Moderate' status in the Water Framework Directive but is 'at risk' of not achieving 'Good' status. The River Lerr has a 'Poor to Moderate' status and is also at risk.
- 4.5.47. Surface water sampling was undertaken at 4 locations within the site in 2018. Results showed that pH, temperature, Conductivity, and Chemical Oxygen Demand were within normal range for surface waters. Biological Oxygen Demand was recorded at 0mg for all samples. Nitrates were recorded at low to moderate levels with higher levels recorded in the Graney River both upstream and downstream from the site. Slightly elevated levels of Total Petroleum Hydrocarbons (TPH) were detected within the settlement lagoon, towards the centre of the site, (SW2), which is located near the buildings and hardstanding area. Vehicle refuelling or fuel storage is the most likely reason for this, and the sample exceeded the level for Irish Drinking Water Regulations.
- 4.5.48. There is no water supply to the site. Water would be required mainly for the washing of sand and gravels and would be sourced from a groundwater abstraction point and a settlement lagoon on the site. Water for the washing plant would be drawn from the recycled water pond to the south-east of the site from two supply lines, both of which are driven by electric pumps. The washing discharge would be piped by gravity feed to the primary and secondary settling ponds to the west of the site for treatment before returning to the recycled water pond via a 225mm gravity line. Surface water drainage will also be directed towards the settlement ponds. A separate drainage system serving the proposed re-fuelling area is proposed. The EIAR states that the settlement lagoons will provide ample storage and will allow for the settlement of suspended solids.
- 4.5.49. No flooding has occurred on the site, and it is not within a flood risk area / zone.

- 4.5.50. The impacts identified as significant on the hydrogeology and hydrology during the construction stage would relate directly to the contamination of surface and ground water through accidental spillages from fuel storage on the site. During the operational phase significant impacts are identified as the importation of contaminated fill, the storage of fuels and chemicals on site, pollution caused by vandalism and the composting of garden waste could result in leachate to groundwater and surface water.
- 4.5.51. Section 9.6 of the EIAR sets out the mitigation measures that would help to counteract any significant impacts during the construction and operational phases. A number of the mitigation measures include best practice measures for the management of surface waters during the construction and operation phases. I am satisfied that, with the adoption of best practice and mitigation measures, the proposed development would have no material or significant impacts on the surface water hydrology or groundwater/hydrogeology environment.

Air and Climate –

- 4.5.52. Chapter 10 assesses the impact of the proposal on air and climate. Baseline air quality in the area is good. The EPA have monitoring stations in Carlow, Kilkenny and Portlaoise which, between them, monitor levels of PM₁₀, Pm_{2.5}, SO₂, Co, O₃ as well as BTEX. Information gathered from the monitoring stations show that no limits have been exceeded for any of the relevant parameters prescribed in any of the Air Quality Standards Regulations 2011.
- 4.5.53. Dust monitoring was carried out at three points on the site in May-June 2019. The Dust Deposition Monitoring Results are set out in Table 10.1 of the EIAR. No commentary is provided in the EIAR regarding the monitoring results. However, I note that the results ranged from 0.7 – 64.4 mg/m²/day. This range is well within the ‘Bergerhoff’ limit of 350mg/(m²*day), which is recommended for use to measure nuisance from dust in the Quarries and Ancillary Activities, Guidelines for Planning Authorities, 2004, (Section 4.7).
- 4.5.54. On-site activities that may give rise to dust and air emissions include vegetative & soil stripping, earthworks, material loading and unloading, laying of the road surface, use of mobile and fixed plant, mobile plant and vehicle movements on-site.

- 4.5.55. A Dust Impact Assessment was carried out to measure the potential impact of dust from the site on sensitive receptors in the area. The results found that all sensitive receptors were found to be at 'low' or 'negligible' risk from dust impacts arising from the site activities during the construction and operational stage. The assessment was carried out without the consideration of mitigation measures.
- 4.5.56. Impacts on the climate would be from the release of greenhouse gas emissions from the use of plant and machinery and HGV movements associated with the development. Having reviewed all of the available information, I would agree with the conclusion in the EIAR that the impact of greenhouse gas emissions associated with the proposed development activities upon climate conditions is deemed to be imperceptible given the nature and scale of the proposal. No other developments have been identified in the area that would lead to cumulative impacts in combination with the proposed development.
- 4.5.57. The EIAR concluded that there will be no residual impacts regarding dust and air quality once the mitigation measures are implemented and there will be no significant climate or odour impacts associated with the development. Mitigation measures are set out in Chapter 10.5 of the EIAR and include best-practice, construction methods for the construction and operation phases. The implementation of the landscaping plan will help to prevent air borne dust to nearby sensitive receptors. I am satisfied that, following the implementation of mitigation measures, which include best practice construction methods, that the proposed development would have no material or significant impacts on air quality and climate.

Noise

- 4.5.58. The impacts of noise from the development are assessed in Chapter 11 of the EIAR. An assessment of the vibration impacts from the development was not carried out. It was deemed unlikely that plant or equipment on the site would generate air borne or ground borne vibration that could affect sensitive receptors in proximity to the site.
- 4.5.59. Noise limit values for extractive industry sites are set out in the EPA guidelines for quarries, (Environmental Management in the Extractive Industry). Daytime noise levels are 55db – night-time noise levels are 45 db.
- 4.5.60. Three houses in proximity to the site were identified as Noise Sensitive Locations, (NSL). The houses are located between 124 and 480m from the site boundaries and

are identified as NSL1, NSL2 and NSL3. Given the nature, scale and duration of the works proposed, no significant noise impacts are anticipated during the site preparation and construction works. However, mitigation measures are recommended to control and minimise noise during these works.

- 4.5.61. A Noise Prediction Modelling exercise was carried out for the development during the operational phase. The results of this exercise are contained in Table 11.8 of the EIAR and shows that the activities during the operational phase will have a negligible impact on the three NSL's identified. Ambient noise levels predicted at the NSL's do not breach the EPA's prescribed daytime noise limit of 55db and the facility does not operate during the evening or night-time. Mitigation measures for controlling and attenuating noise during the operations are included in Section 11.6 of the EIAR. As the facility is subject to licence from the EPA, emissions from the site will be controlled in the requirements of the licence.
- 4.5.62. Subject to the adoption of noise control measures committed to as detailed above and ensuring operational times are controlled, I am satisfied that the proposed development would have no material or significant noise or vibration impacts.

Traffic & Transport

- 4.5.63. The Traffic Impact Assessment, (TIA), for the EIAR was prepared for the original development proposal. An amended TIA was submitted under further information.
- 4.5.64. The existing site access is from the L8100 via a gravel road of approximately 450m in length with an average width of 4m. A new access road for HGV traffic is proposed onto the L4016. Both the L8100 and the L4016 are two-way, local roads with a speed limit of 80km/h at the site.
- 4.5.65. A 24hr traffic and speed survey was undertaken on the L4016 in 2017 to ascertain the background traffic volumes. The survey results are outlined in Sections 13.3.6 – 13.3.8 of the EIAR. Traffic movements recorded by the survey indicated that there were low levels of vehicular traffic using the road but that average traffic speeds were in excess of the 80km/h speed limit.
- 4.5.66. The Traffic Impact Assessment in the EIAR is based on the larger quantum of traffic that would be servicing the site during the operational phase and is based on 100

HGV daily two-way trips and 8 LV daily two-way trips. Assumptions made allow for 75% of the traffic entering and exiting the site would do so from the west with the remaining 25% using the road network to the east. HGV's would only use the proposed new access onto the L4016 only and LV's would use the access onto the L8100. Traffic generated during the construction phase will be in the order of 5-10 HGV movements per day. This will not result in a significant, additional level of traffic on the local road network.

- 4.5.67. The full results of the traffic forecasting on the L4016- West for the 'do-nothing' and 'do- something' scenarios are set out Tables 13.9 and 13.10 of the EIAR. I note that the existing access to the L8100 was not modelled. However, LV traffic movements to and from this access would be low and are not likely to have any significant impact on the road network.
- 4.5.68. When both sets of results were compared, the 'do-something' scenario showed an increase of 3% in Annual Average Daily Traffic, (AADT), levels in the design year of 2025 over the 'do-nothing' scenario which included standard background growth levels. This figure reduced to 2.7% in the 2030 design year and represents a small increase in traffic on the overall road network to the west of the site. The EIAR states that the theoretical capacity of the local road for level of service D is 5,000 AADT. (Taken from TII Publication Dn-GEO-03031 (Rural Road Link Design), Section 13.4.2 EIAR). The projected traffic to 2030 would be 3,045 AADT, (including background and development traffic), which is well within the capacity of the road.
- 4.5.69. The proposed new access junction onto the L4016 has been designed to be 7m wide with corner radii of 13.0 metres. A security gate and fencing are proposed to be set back c.40m from the L4016 which would prevent HGV's from blocking the road. Visibility splays of 160m from a point 2.4m from the edge of the carriageway can be provided in each direction. A Swept Path Analysis of the junction was also carried out to determine its suitability for HGV's and is shown in Drawing C271_2 2017 TR01. A Stage 1 Road Safety Audit was carried out and fed into the overall design.
- 4.5.70. Mitigation measures are outlined in Section 13.5 of the EIAR and include the separation of HGV's and LV's by the provision of a new access onto the L4016, a new junction and signage on the public road. Residual impacts would be from the increase in HGV traffic on the road network.

4.5.71. Having reviewed the EIAR and both TIA's, I am satisfied that the level of traffic generated by the proposed development would not result in a significant impact on the surrounding road network. The mitigation measures proposed relate to the new access road which will separate HGV's from LV's. Signage for HGV's is also proposed along the public road network.

Material Assets, Cultural Heritage & Landscape

Cultural Heritage

4.5.72. There are no protected structures on, or in proximity to the site. Historical maps show two structures in place on the site which appear to have survived from 1907. These vernacular structures will remain in place and do not form part of the proposed development.

4.5.73. There are five recorded monuments in the study area. The closest is a ringfort, (KD040-012), which is c. 10m to the east of the new access road from the L4016.

4.5.74. The existing quarry has been in use for a considerable period of time. It is likely that ground disturbances caused by the previous development have led to the removal of any archaeological remains. The proposed development will involve the filling in of quarry voids and the processing of material on the site. No potential impacts are predicted on the archaeological and cultural heritage resources on the site as a result of the proposed works.

4.5.75. The new road would pass in close proximity to a ring fort which is a recorded monument. There is a possibility that ground disturbances during the construction of the road will have a direct and negative impact on previously unrecorded archaeological remains. Mitigation measures are recommended to prevent significant impacts that may occur during soil stripping.

4.5.76. No residual or cumulative impacts are anticipated.

4.5.77. I am satisfied that due to the nature and scale of the proposed development that there will be significant impacts on the existing cultural heritage in proximity to the site as a result of the development.

Landscape -

4.5.78. Chapter 15 of the EIAR addresses the impact of the proposal on the landscape. The site is located in the southernmost part of the 'Eastern Transition' character area as categorised in the Landscape Character Assessment of the Kildare Development Plan. This landscape type is described in the LCA as 'Class 2, Medium Sensitivity Areas – with the capacity to accommodate a range of uses without significant adverse effects on the appearance or character of the landscape having regards to localised sensitivity factors.

4.5.79. Visually sensitive receptors in proximity to the site have been identified as the one-off houses which have been constructed along the L8100 to the north-east of the site and along the L4016 to the south and west of the site. The nearest house is located approximately 80m to the north of the site boundary. The majority of properties with clear visibility of the site are located between 0.5-1.0km to the east and west of the site boundaries. The location and sensitivity of all of the visual receptors is set out in Figure 15.8 of the EIAR.

4.5.80. The nearest protected views from Scenic Routes are View 21 – approximately 2.8km from the development – view to and from Corballis Hill and surrounding roads. View 26 – approximately 4km from the site – Views to and from Hughestown Hill and views from the L8052. The site is not distinguishable from these locations and the proposed development will not intrude on the view.

4.5.81. The proposed development will require the following works within the site,

- The removal of an area of improved grassland in the north-west corner of the site, which is currently used for grazing,
- The removal of a linear stretch of grassland used for arable farming to provide a new access road,
- The provision of a temporary bridge over the Graney River,
- The removal of an area of scrub in the western corner of the site and changes to the quiet, rural character of the area during the construction stage primarily through vehicular activity on and around the site.

4.5.82. Within the broad landscape the magnitude of the soil recovery facility is deemed to be negligible. The methodology used in the EIAR assessment was based on the recommendations of the Guidelines for Landscape and Visual Impact Assessment

(GLVIA), as published by the Landscape Institute UK, and the Institute of Environmental Management and Assessment 3rd edition, (2013). The assessment concluded that the impact of the proposed development on the broader landscape would be classified as Imperceptible and hence not significant.

- 4.5.83. The sensitivity of the detailed landscape area, (site and the area surrounding the site), is categorised as 'Negligible', as it includes, '*Areas of landscape character that include derelict, mining, industrial land...where there would be a reasonable capacity to embrace change or the capacity to include development proposals*'. The magnitude of the impact on the detailed landscape is considered to be low as it comprises the removal of small areas of grassland and scrub within the site. The combination of Negligible sensitivity with Low magnitude results in an impact classed as Imperceptible and hence not significant within the detailed landscape.

Visual Impact –

- 4.5.84. Aspects of the proposal which would cause visual obstruction would be dust, vehicular activity within and outside of the site, tall plant including aggregate screeners, (8-9m in height), and stockpiles of fill materials which could be up to 7m in height. The visual receptors most likely to experience impacts from visual obstruction are the houses in proximity to the site, (identified in Figure 15.8 of the EIAR). People using the public roads may also experience visual impacts, but they will be intermittent and for short durations.
- 4.5.85. The assessment found that no properties will experience Significant adverse visual impacts. Moderate adverse visual impacts will be experienced by a total of seven residential properties, (which are located on an elevated level on the L8100 and range in distance from 195 – 500m from the subject site), and one business property which is c. 720m to the south of the site but has open views across the fields towards the site. Six of the seven houses are located along the L8100, close to the junction with the L4016/L4016. One house is located c. 185m to the south of the site but currently has some visual screening around the site in the form of trees and hedges.
- 4.5.86. Mitigation measures are set out in Section 15.8 of the EIAR and include the installation of a 2m high mound along the eastern site boundary where the site is visible from the houses to the east along the L8100 and the planting of semi-mature

trees along the northern, western and eastern boundaries to supplement the existing hedgerow and around the entire site boundary.

- 4.5.87. Residual landscape and visual impacts will be slight to imperceptible. When the full site restoration is complete the broader landscape has the capacity to accommodate a new gentle mound surrounded by native trees, which will result in an imperceptible visual impact in the long term.
- 4.5.88. I am satisfied that the mitigation measures outlined for the operational phase would be sufficient to prevent any significant negative impacts on the visual amenity of the sensitive receptors within the area of the site. The landscaping plan for the full restoration of the site will result in a long-term positive impact on the landscape.

Material Assets

- 4.5.89. The material assets assessed in the EIAR relate to Housing and Settlement, Built Services and Waste Management. The PA requested that the applicant provide information on the waste activity and processing capacity of the development in the Material Assets chapter.
- 4.5.90. The facility will operate under a Waste Licence from the EPA and will be undertaking waste activities that fall under WMA Recovery Codes 10, 5 and 3, namely. I am satisfied that the impact of the proposal on Housing and Settlement has been addressed in detail in the previous chapters of the EIAR. The proposal will not have any significant impact on built services, in terms of electricity, gas or water and Chapter 9 has addressed the impacts of the proposal on surface water drainage. I do not consider that the proposed development will have any significant adverse residual impacts subject to the mitigation measures outlined in the EIAR.

Reasoned Conclusion on Significant Effects

- 4.5.91. Having regard to the examination of environmental information contained above, and in particular to the EIAR and supplementary information provided by the applicant, and the submission from the Planning Authority and prescribed bodies in the course of the application and appeal, it is considered that the main significant direct and indirect effects of the proposed development on the environment are, and would be mitigated, as follows:

- 4.5.92. Potential negative effects on the receiving soil and water environment, including the River Graney which forms an indirect connection to the River Barrow and River Nore SAC, as a result of accidental spillages of chemicals, hydrocarbons or other contaminants entering the groundwater or surface water environments and discharging to the River Graney thereafter during the infilling works and activities. The impacts would be mitigated by adherence to best practice, active surface water management ensuring surface water is contained on site, operating above the water table and the incorporation of established pollution and sediment control measures during the construction and operational phases.
- 4.5.93. Potential negative effects on the protected species found within the site, including badger, otter and sand martin, through disturbance and loss of habitat/ habitat fragmentation. Impacts on species effected by the development would be mitigated by restricting any clearance works or removal of habitats to the months outside of the breeding/nesting period. A buffer would also be implemented around the badger setts on the site and the new road would incorporate ledges to allow for otters crossing. The roadside boundary near the river would also have mammal proof fencing applied to restrict otters from crossing.
- 4.5.94. Positive slight impacts on the landscape and visual environment in the long term, once the infilling works are complete and the land is returned to agricultural use. No mitigation is required.
- 4.5.95. The proposed development is not likely to have any unacceptable direct or indirect adverse effects on the environment.

5.0 The Appeal

5.1. Grounds of Appeal

The grounds of appeal relate to planning conditions attached to the grant of permission and include the following,

- The original development proposal related material recovery involving the recovery of soil of 1.8m tonnes over much of the extracted area of the existing

authorised gravel pit and the recycling of other Construction and Demolition, (C&D) waste streams and aggregates for re-use for a period of 25 years.

- The total annual tonnage applied for 387,000 tonnes, which suggested an average soil importation and recovery of 72,000 tonnes per annum and other C&D waste streams of 315,000 tonnes per annum.
- This proposal was substantially over the threshold for Strategic Infrastructural Development and was amended through further information. The revised proposal is for a maximum of 99,500 tonnes per annum, with 72,000 tonnes of soil (maximum per annum) for recovery through deposition, and 27,500 tonnes (maximum per annum) of other C&D waste streams for recycling and re-export.
- Assuming that no trucks arrive and depart laden in both directions the total annual laden tonnage transport would be 72,000 (soil) + 27,500 (imported other C&D waste + 27,500 (exported recycled aggs) = 127,000 tonnes. In construction material terms this is equivalent to the output of a small to medium sized gravel pit.
- The conditions that have been applied are impossible to afford from a modest development and makes the development economically unviable. Based on a mixture of 4 axle (tipper) and 5 axle (articulated) trucks, the average load would likely be 22 tonnes, resulting in potentially c. 11,550 total truck movements per annum, which is approximately 18% of the initial proposal of maximum tonnage.
- Condition No. 3 – The EIAR and the NIS were prepared for the initial proposal which allowed for a much larger throughput. Many of the mitigation measures outlined are not disproportionate to the revised proposal. The environmental operational control of the site is legally a matter for the EPA Waste Licence. The Board is requested to amend Condition No. 3 to state that the operator shall comply with the conditions of the EPA licence.
- Condition No. 6(a) – This condition requires the disposal of the sludge from the wheelwash closed loop water recycling by an authorised contractor. The facility is to be licenced for handling sludge within a set of Waste Acceptance

Criteria which will be set out in the EPA licence. The Board is requested to amend this condition to state that the sludge is dealt with in accordance with the appropriate Waste Acceptance Criteria, and where found not to conform, be otherwise disposed of at another appropriately authorised facility.

- Condition No. 10 – This condition requires the developer to ensure that a 50-70cm deep layer of AC20 is laid for the full width of the carriageway from Castledermot to the Kildare County boundary with Wicklow for a length of 9.050km.
- The L4016/L4016 is already heavily trafficked by trips to and from the M9 and by HGV's using the six operational gravel pits along the roadway.
- The Traffic Impact Assessment, (TIA), submitted with the EIAR specified that there would be 108 traffic movements per day, based on an annual tonnage of 387,000. In the response to FI, the applicant stated that a total of 72,000 tonnes of fill material and 27,500 tonnes of recycle material will be brought to the site annually over a period of 25 years. This restriction of 99,500 tonnes per year for a period of 25 years was applied by the PA in their decision to grant permission.
- A revised Falling Weight Deflectometer Report, (FWD Report), was commissioned in January 2021 to assess the impact of the reduced traffic loading. Data was analysed to determine the bearing capacity of the road and to provide strengthening proposals for the revised usage over the 25-year period.
- The analysis showed that the impact of the development on traffic levels both now and in the future would only account for a 5% increase in the overall traffic count. The requirements of Condition 10 is disproportionate to the actual level of increase in traffic predicted from the development.
- The FWD Report demonstrated that, out of the 9.05km of road, only 3.375km actually needs to be strengthened. It is also clear that whether the proposed development proceeds or not, the road will require the exact same areas to be upgraded.

- The details of Condition require more than 1 million euro of roadworks, which is unfeasible. It would also result in the applicant paying for the use of every other road user in the past, (i.e. damage done to the road by other HGV's and quarries using it), and over the life of the permission.
- Condition No. 12 – This condition requires that a new access route be constructed in accordance with drawings G1210-02 and G1210-04 received by the PA and shall include HRA surfacing at the junction with the L4016; a wheel wash, oil interceptor; signage and shuttle light system
- In consideration of the decrease in the scale of operations this requirement is disproportionate to the development. The developer accepts that they should maintain the areas of the public road most directly impacted by traffic using the facility. This is considered to extend to 40-50m, which would allow for turning traffic to 20 – 25m on each side of the entrance.
- The Board is requested to amend the condition to require that this section of the public road is maintained to a good and safe standard of use with details to be agreed with the PA.
- Condition No. 13 – This condition requires that a Stage 3 Road Safety Assessment, (RSA), be carried out to examine the internal haul route. The Developer is requested to include agreed recommendations from the RSA in the amended constructed works for both the internal development and the new junction with L4016.
- This condition is a disproportionate intrusion into the operation of the site with respect to internal haul routes which are fixed from the L4016 to the site but should be left flexible thereafter within the site to allow for the progressive nature of soil recovery through deposition. The Board is requested to omit this condition in its entirety.
- Condition No. 18 relates to the provision of public lighting and requires that the details and specifications of the lighting system to serve the access route to the quarry shall be agreed in writing with the PA. The public lighting at the junction with the main road shall also be examined for a distance of 100m on either side.

- The conditioning of public lighting for such a small development is not appropriate. There would be a maximum of 11,550 truck movements to and from the site per annum, which equates to 42 movements per average working day. Based on the working hours conditioned by the PA, (7am to 7pm), this averages 1.75 vehicles in and 1.75 vehicles out per hour.
- The entrance is located on a long straight stretch of roadway and has been designed using swept path analysis and with a set-back of 11.4m as a minimum. The low traffic figures do not justify the public lighting requirement in a rural setting and is unnecessary.
- Condition No. 20 requires that the developer pays €202,500 under fixed contributions under the provisions of Section 48 of the Planning and Development Act and under the Kildare County Council Development Contribution Scheme 2015-2022.
- Condition 20 –
- The Applicant/Developer to pay to Kildare County Council the sum of €202,500.00 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 5th November 2015 in accordance with Section 48 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with Section 13 of Development Contribution Scheme adopted by Kildare County Council on 5th November 2015.
- Note: Please note water and wastewater development contribution charges now form part of the water connection agreement, if applicable, with Irish Water.
- Reason: It is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority.

5.2. Planning Authority Response

- Response from the PA was not received within the time frame and was returned.

5.3. Observations

- EPA – The proposed development may require a licence under the Waste Management Act. Should the EPA receive an application for a licence, the applicant will be required to submit the associated EIAR as part of the application. The licence application will be subject to an Environmental Impact Assessment regarding the matters that come within the functions of the EPA in accordance with Section 40(2A) and Section 42(1G)(a) of the Waste Management Act. All matters to do with emissions to the environment from the activities proposed will be considered and assessed by the Agency. Should a licence be granted, it will incorporate conditions that will ensure that appropriate National and EU standards are applied, and that Best Available Techniques will be used in the carrying out of the activities.

6.0 Assessment

6.1. This is a first-party appeal against Condition No's 3, 6(a), 10, 12, 13, 18 and 20 attached to the Planning Authority's decision to grant permission.

6.2. Having regard to the nature and scale of the proposed development, which is for works to infill worked-out quarry voids and the for the intake of C&D waste for processing and resale, it is considered that the determination by the Board of the application, as if it had been made to it in the first instance, and that a *de novo* assessment would not be warranted. Therefore, the Board should determine the matters raised in the appeal only, in accordance with Section 139 of the Planning and Development Act 2000, as amended.

6.3. **Condition No. 3 states the following –**

All the environmental and construction mitigation and monitoring measures, set out in the Environmental Impact Assessment Report and Natura Impact Statement, shall

be implemented in full in accordance with the timelines set out, except as may otherwise be required in any Waste Licence issued by the Environmental Protection Agency in respect of the proposed development or as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity and to mitigate the environmental effects of the proposed development.

6.3.1. The applicant argues that both the EIAR and the NIS are based on a much larger throughput than the revised proposal and many are disproportionate to the permitted development. It is also argued that environmental operational control of the site is legally a matter for the EPA licence.

6.3.2. I have reviewed all documents submitted with the proposal, including the EIAR and the NIS, and have visited the site. Section 34(2)(c) of the Planning and Development Act 2000, (as amended), states that,

(c) Subject to section 98 (as amended by section 256 of this Act) of the Environmental Protection Agency Act, 1992 , and section 54 (as amended by section 257 of this Act) of the Waste Management Act, 1996 , where an application under this section relates to development which comprises or is for the purposes of an activity for which an integrated pollution control licence or a waste licence is required, a planning authority shall take into consideration that the control of emissions arising from the activity is a function of the Environmental Protection Agency.

6.3.3. The EIAR was prepared for the original development proposal which was for a total of 387,000 tonnes of inert waste to be accepted onto the site on a yearly basis for a period of 10 to 25 years. This annual figure was revised downward to 99,500 tonnes per annum during the further information phase of the application process. The applicant's submission to the request for further information states that, *'Following a thorough review of the EIAR, it has been determined that content and conclusions of the following EIAR chapters remain valid having regard to the proposal to reduce the quantity of waste material to be accepted and recovered on-site per annum and over the course of the project:*

- *Population and Human Health*

- *Biodiversity*
- *Soils and Geology*
- *Hydrogeology and Geology*
- *Air and Climate*
- *Material Assets*
- *Cultural Heritage*
- *Landscape.*

6.3.4. The submission notes that the chapters listed are non-numeric in nature and will therefore not be affected by a numeric reduction in tonnage or traffic and that the conclusions drawn in each chapter remain valid. However, it is still likely that certain impacts will have a reduced magnitude/significance, (e.g. dust related impacts), owing to the reduced intensity of the operations. The submission also states that, *'It should be noted that all mitigation measures defined in the EIAR will still be implemented in full regardless of the reduction in tonnage to be accepted on-site per annum'*.

6.3.5. The development proposal will be subject to a Waste Management licence from the EPA. This licence will include conditions to control emissions from the site. Section 5.7 of the EIAR contains an outline of the proposed emission and environmental control issues from the development and states that the applicant endeavours to adopt and implement any additional measures required by any planning permission or waste licence.

6.3.6. I have reviewed the EIAR and note that many of the mitigation measures serve a number of purposes such as the implementation of the landscaping plan to facilitate restoration, protection of species identified in the site as well as reducing the impacts of the development. Mitigation measures contained on the NIS are required to specifically address any potential impacts on the Conservation Objectives for the Qualifying Interests of the Natura 2000 within the zone of interest of the site.

6.3.7. I consider Condition No. 3 to be necessary and reasonable as it requires compliance with the mitigation measures outlined in the EIAR and NIS to be complied with unless otherwise regulated through the EPA licence. The EIAR and NIS contain

mitigation measures to protect biodiversity and sensitive flora and fauna within, or in proximity to, the subject site. These measures would not be covered by the EPA licence and are important considerations. The condition also acknowledges that the conditions of the EPA licence will take precedence over the planning condition for specific emissions. I do not agree that the mitigation measures outlined in the EIAR and NIS should be disregarded and I recommend that this condition be retained as is.

6.4. Condition No. 6(a) states the following –

(a) The Developer shall provide a closed loop wheel wash system to the satisfaction of the Planning Authority. The wheel wash system shall be desludged on a regular basis by an authorised collector and the material removed to an authorised facility for recovery/disposal.

(b) A waste quarantine area shall be provided at the site.

(c) A weighbridge shall be provided at the site.

Reason: In the interest of clarity and public health and environmental sustainability.

6.4.1. With regard to Condition No. 6(a), the applicant argues that the facility will be licenced and will be capable of handling sludge, subject to the sludge not being contaminated beyond the Waste Acceptance Criteria which will be set out in the required EPA licence. The applicant requests that the Board amend this condition to state that the sludge will be dealt with in accordance with the appropriate Waste Acceptance Criteria at the facility and, where found not to conform, be otherwise disposed of at another appropriately authorised facility.

6.4.2. The applicant has not specifically stated how the sludge would be dealt with on the site. Section 5.7.5 of the EIAR sets out the measures to be carried out on the site to ensure the protection of waters. One of the measures relates to the wheel wash facility and states that, *'The wheel wash system will be desludged and cleaned ca. every 6 months at a minimum or as needed by an appropriate provider. Waste from the unit will be dispatched to an appropriate authorised destination facility'*. Table 5.4 of the EIAR - Waste Generated On-Site, identifies *'Interceptor Sludge'* as a type of waste that would be generated at the facility. The EIAR states that Interceptor Sludge would be dispatched off-site to a Hazardous Waste Treatment Facility.

- 6.4.3. Information submitted to the PA by the applicant on the 8th February 2021, (Document Number 2181-05 v1.00), in response to a request for further information states that, *‘a surface water drainage inspection, maintenance and monitoring program will be established on surface water emanating from the site shall be tested quarterly. During the operational stage settlement ponds and other site infrastructure such as silt traps and interceptors, will be visually inspected every two weeks to ensure that they are functioning properly’*. The document also states that all materials cleared out from settlement ponds will be reutilized as backfill material as part of the restoration project. However, the response does not state how the silt from the wheel wash will be dealt with and does not propose that it is dealt with on site.
- 6.4.4. I consider the commitments made by the applicant in Section 5.7.5 of the EIAR, to deal with the wheel wash system to be reasonable. The applicant has committed to desludging and cleaning the wheel wash system every 6 months at a minimum or as needed, with works to be carried out by an appropriate provider. Sludge from interceptors is also identified as hazardous waste that will be dispatched off-site for treatment/ disposal. Further information submitted by the applicant on the 8th February 2021 also states that all materials cleared out from the settlement ponds will be used as backfill material for the restoration.
- 6.4.5. It is likely that the EPA licence will include measures to deal with hazardous waste and / or sludge from the site. However, in the absence of the conditions, I consider it reasonable that any non-hazardous sludge can be dealt with on site through the plans for restoration and that any contaminated sludge be required to be removed from the site by an authorised operator. Therefore, I recommend that, in accordance with the information submitted by the applicant on the 8th February 2021, (Document Number 2181-05 v1.00), that a plan be prepared for the management of surface water within the site and including the closed loop wheel wash system, for agreement with the PA. The plan should set out the methods and frequency for maintaining and cleaning the wheelwash and interceptors, as well as testing for hazardous waste. Any hazardous material will have to be removed from the site for disposal by an authorised operator.
- 6.4.6. I recommend that Condition No. 6 (a) be amended as follows:

(a) The Developer shall provide a closed loop wheel wash system to the satisfaction of the Planning Authority. A plan should be prepared by the applicant for the management of waste from the wheel wash system for written agreement with the PA. The plan should set out how the hazardous and non-hazardous waste will be disposed of.

Reason: In the interests of clarity and public health and environmental sustainability.

6.5. Condition 10 –

Prior to commencement of the development, the Developer shall ensure that a 50-70 mm depth of AC20 is laid across the width of the carriageway, from Castledermot to the Kildare County boundary with Wicklow. The Developer shall also ensure that Surface Dressing is laid with a 6mm pad coat followed by a double surface dressing 14mm/6mm (Design Summary 3) in accordance with IAT Guidelines for Surface Dressing in Ireland from Castledermot to the Kildare County boundary with Wicklow.

Reason: In the interest of road safety.

- 6.5.1. The applicant argues that traffic has increased on the Baltinglass to Castledermot road, (L4016 / L4016), since the opening of the M9 motorway. They also note that a large number of HGV's use the road due to the number of gravel pits in the area. At the time of writing the appeal, there were nine gravel pits along the roadway, six of which were fully operational. The applicant has prepared two Falling Weight Deflectometer, (FWD), studies. The results of the first FWD report found that even with the initial larger development proposal, the existing pavement structure from its junction with the R148, (Chainage 0) eastbound for 2200 metres, is strong enough to carry the predicted traffic loading (from the larger development) for a 20-year design period. I am satisfied that based on the findings of the report, that any works to be carried out by the applicant to this section of the road would be unnecessary.
- 6.5.2. The second FWD report found that the impact of the of the development both now and in the future will only account for 5% increase in the overall traffic count. Findings also showed that some overlay to the road was required from Chainage 2300-4050 in both the 'Do-Nothing' and 'Do-Something' scenarios. This area relates to the L4016 to the east and west of the proposed new entrance. Intermittent sections of the L4016 travelling east from the proposed new entrance have been identified in the report as requiring overlay above 50mm in both the 'Do nothing' and

'Do something' scenarios. The impact on the condition of the road was also modeled on both scenarios and the results showed that of the 9.05 kilometers of road requiring resurfacing by the PA, just 3.375 kilometers would require work based on the parameters used in the study. The applicant argues that these sections of roadway would need resurfacing whether the development went ahead or not. It is also contended that the details of condition 10 would require more than €1 million of road works which makes the permission unusable. Furthermore, the applicant would be paying for the use of every other road user in the past and over the life of the permission.

- 6.5.3. The application was assessed under the Kildare County Development Plan 2017-2023, which was the operational plan at the time. Policy EI 11 was contained in Section 10.7 – Extractive Industries and states the following, *'Ensure that the full cost of road improvements, including during operations and at time of closure, which are necessary for the quarrying of sand and gravel, shall be borne by the industry itself and that the industry shall also contribute to the recreation and amenity of the county'*. The re-instatement of quarries is addressed in Section 9.9.1 of Chapter 9 of the KDP. Objective RD 046 of this chapter states that it is the objective of the PA to to, *'Require road re-instatement work to be on-going during operations, in the interests of road and traffic safety. Works undertaken to re-instate/improve the public road should be undertaken by the quarry developer or paid by them and completed by the Council'*.
- 6.5.4. Guidance on the application of planning conditions is contained in the Development Management Guidelines for Planning Authorities, (2007), and in the Office of the Planning Regulator, (OPR), Practice Note PN03, (2022). Section 3.8 of the OPR guidance states that, *'Conditions requiring development to be carried out on lands outside the control of the applicant prior to the commencement of development, or prior to the occupation of the development, cannot be complied with by the developer and so are not enforceable. Such conditions should not be imposed'*. The Development Management Guidelines also set out six specific requirements for planning conditions and state that planning conditions should be;
- Necessary – i.e. whether, without the condition, either permission for the development would have to be refused, or the development would be contrary

to the proper planning and sustainable development in some identifiable manner.

- Relevant to planning – the requirements of a condition should be directly related to the development to be permitted or the condition may be ultra vires and unenforceable.
- Relevant to the development permitted
- Enforceable – conditions should be effective and capable of being complied with.
- Precise – every condition should be precise and understandable.
- Reasonable - a useful test of reasonableness may be to consider whether a proposed condition can be complied with by the developer without encroachment on land that he or she does not control, or without otherwise obtaining the consent of some other party whose interests may not coincide with his/hers.

6.5.5. Condition No. 10 requires the applicant to carry out works on third party lands prior to the commencement of development. This is contrary to OPR guidance, which specifically states that such conditions should not be attached to permissions. Furthermore, I am of the view that under the Development Management guidelines, the condition is not necessary as it would not be contrary to proper planning and sustainable development, is not relevant as it is unenforceable, and is not reasonable as it would be overly onerous.

6.5.6. I note that Condition No. 20 of the permission requires the applicant is required to pay a development contribution of €202,500 in accordance with the Kildare County Council Development Contribution Scheme, which was prepared under Section 48 of the Planning and Development Act 2000 (as amended). This contribution relates to the public infrastructure and, as per Section 6 of the Contribution Scheme, includes the provision of roads and the refurbishment, upgrading, enlargement and replacement of roads. I am satisfied that, under Condition No. 20, a development contribution has been applied for the upkeep of the public roads. Should the PA wish to apply an additional condition for the development, the correct mechanism to

do so would be under Section 48(2)(c) which allows for a special contribution to be applied and which states the following;

‘A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development’.

6.5.7. In terms of the application of the Section 48(2)(c), the sub-section allows for the provision of a special contribution in respect of,

(a) a particular development, in circumstances where,

(b) specific exceptional costs are incurred, and where,

(c) these costs are not covered by a scheme made under this section.

6.5.8. With reference to these criteria, I consider that in this instance, a special contribution for the resurfacing of the public road from Castledermot to the Kildare County boundary with Wicklow would not be appropriate as the costs incurred are not exceptional insofar as they relate to the development proposal which is located in area where a number of extractive industries operate or have operated. Furthermore, I consider that any application of any special contribution under Section 48(2)(c) would result in a duplication of contributions. I recommend that Condition No. 10 be removed from the permission.

6.6. Condition 12 states the following –

Prior to use as a Material Recovery Facility, the Developer shall construct a new access route generally in accordance with drawings G1210-02 and G1210-04 received by the Planning Authority on 8th February 2021. The works shall include the following: HRA surfacing at the junction with the L4016; a wheel wash, oil interceptor; signage and shuttle light system.

Reason: In the interest of road safety.

6.6.1. The applicant is appealing this condition as they contend that given the revised scale in operations, Condition 12 is disproportionate to the development. The applicant

accepts that they should maintain the areas of the public road that are most impacted by traffic using the development, namely the impact of turning traffic 20 to 25 meters on either side of the access. The applicant is willing to commit to ensuring the good and safe standard of use of this section of road and road subject to agreement with the PA. the board is requested to amend the condition in terms of referencing this commitment to maintain that area of the public road within the turning sweep of trucks using the facility.

- 6.6.2. Drawing G1210 02, Survey Plan, Longitudinal Section & Typical Cross Section and Drawing G1210 04, Proposed Informal Haul Road, Layout Plan and Longitudinal Section, show the general layout of the internal haul road and the proposed new access point from the L4016. The drawings also show HRA resurfacing at the junction and the proposed location of the wheel wash, oil interceptor and signage.
- 6.6.3. Condition No. 12 requires that the access road be constructed in accordance with the details submitted by the applicant and does not require any additional maintenance of the public road. I am satisfied that Condition No. 12 is reasonable and does not require the applicant to enter into any onerous works that would be over and beyond what was proposed. I recommend that Condition No. 12 be retained in full.

6.7. Condition 13 states the following –

Prior to use as a Material Recovery Facility, the Developer shall carry out a Road Safety Assessment (RSA) Stage 3, by the independent accredited Road Safety Auditor, to examine the internal haul route. The Developer is requested to include agreed recommendations from the RSA in the amended constructed works for both the internal development and the new junction with L4016.

Reason: In the interest of road safety.

- 6.7.1. The applicant requests that the Board delete Condition 13 in its entirety. It is argued that this condition was attached with respect to the initial application and does not reflect legitimate concerns for safety within the revised proposal. It is a disproportionate intrusion into the operation of the site with respect to internal haul roads which are fixed from the L 4016 to the existing site, but which should be left

flexible thereafter within the main operational site to allow for the progressive nature of soil recovery through deposition, which is the principal activity of the development.

- 6.7.2. A Stage 1 Road Safety Audit, (RSA), was carried out for the junction of the proposed new internal access road with the L4016. In response to a request for further information, a Stage 1/2 RSA was carried out to examine the road safety implications associated with the construction of the proposed internal access road to the site. In their response to the further information request, the applicant undertook to address the recommendations of both audits and submitted revised drawings as required.
- 6.7.3. I accept that, given the nature of the development, that the internal haul routes within the original site boundary will be subject to change. The design and layout of the internal site will be subject to the provisions of the Health and Safety Authority guidance and legislation for a facility of its type and do not warrant an RSA. The proposed access road will pass over third-party lands and will have a fixed alignment. This road will be restricted for use by HGV's and all other access to the site will be via the existing road from the L8100.
- 6.7.4. Section 15.7.4 of the KDP addresses the Development Management requirements for the Road and Street Network. This section requires that the design of development proposals must address the functionality and safety of the road through Road Safety Impact Assessment or RSA. It states that a 'Road Safety Audit (RSA) involves the evaluation of road schemes during design, construction and early operation to identify potential hazards to all road users. RSA is to be carried out on all new national road infrastructure projects and on any schemes/proposal which results in a permanent change to the layout of a national road. (Refer to TII standard: GE-STY-01024 Road Safety Audit, 2017 and GE-STY-01027 Road Safety Audit Guidelines, 2017)'. The TII Road Safety Audit guidance document, (GE-STY-01024), also states that, 'A Stage 3 RSA is carried out upon completion of construction and prior to the opening of the scheme, or part of the scheme to traffic wherever possible'.
- 6.7.5. The TIA has assessed the capacity of the road the new access will open onto and found that it is performing below capacity. The internal road will not be open to members of the public and will be gated as the access point. I note that the PA had no objection to the design of the new access onto the L4016 and that sightlines of

160m in both directions will be achieved from a set-back of 2.4m. On the occasion of the site inspection, I observed that the road at this location is straight with good visibility in both directions. Given the nature and scale of the proposed development, I am satisfied that the functionality and safety of the proposed access and internal road has been assessed appropriately in both of the Stage 1/2 RSA's which have been prepared. The applicant has committed to complying with the recommendations contained in both assessments. Therefore, I recommend that the Condition No. 13 be amended as follows,

The Developer is required to implement the recommendations contained in the Stage 1 and Stage 1/2 Road Safety Audits dated May 2020 and January 2021 regarding the proposed access onto the L4016 and the internal haul route.

Reason: In the interest of road safety.

6.7.6. Condition 18 states the following –

(a) Prior to commencement of development, the Developer shall provide full design details and specifications of the lighting system, necessary to serve the access route to the quarry, and submit this for the written agreement of the Planning Authority and the Public Lighting Engineer's Office. The proposed lighting system shall comply with the requirements set out in Kildare County Council's Street Online Lighting Technical Specification.

(b) At the new junction at the main road, the Developer shall examine the public lighting for 100 metres on either side of the new entrance.

(c) The Developer shall ensure that the approved lighting is fully commissioned prior to use of the facility.

(d) The Developer shall comply with any future requirements of the Planning Authority in relation to: adjusting the floodlight aiming or fitting appropriate additional louvers, to deal with remaining glare issues that may arise for road users/nearby residents/rural habitat and may only become apparent when the installation is commissioned.

Reason: In the interest of road safety and to protect the amenities of the area.

- 6.7.7. The applicant is requesting that the Board delete Condition No. 18 in its entirety as they are of the opinion that the condition is excessive for the scale of the development permitted. The traffic model for the development sets out a potential maximum of 11,550 truck movements per annum. This equates to 42 movements per average working day, (based on a 50 working week year with 5.5 days per working year). Condition number 19 sets out the working hours for the development and requires that the development operates between the hours of 7:00 AM and 7:00 PM Monday to Friday and 8:00 AM to 2:00 PM on Saturdays. This allows for an average of 1.75 vehicles in and 1.75 vehicles out per hour. the applicant argues that such low levels of traffic does not require public lighting and that the junction allows for adequate visibility in both directions.
- 6.7.8. The proposed development is located in a rural area which has no public lighting and is surrounded by agricultural fields. Ecological surveys carried out for the application found evidence of Badgers, Otters and Sand martins either within or around the site. It was also noted that the surrounding tree lines could provide good migration and foraging routes for bats. Mitigation measures recommended in the EIAR and the NIS included measures to restrict lighting during the hours of dusk in order to protect protected species in and around the site. The proposed road will cross over an open field which is visible from the surrounding areas. Given the location of the road, the operating hours set out in Condition No. 19 of the permission, and the mitigation measures recommended in the EIAR and NIS, I am satisfied that public lighting is not required for the internal access road. However, whilst the TIA noted the low levels of traffic in the area, it did find that the average speed on the road was in excess of the 80kmph speed limit. As the entrance is restricted to HGV's and will be open during the winter during the hours of darkness, there is an argument to be made for lighting to the entrance for traffic safety on the local road. In order to restrict lighting spill, this lighting could be triggered by motion sensor from the internal road. Therefore, I recommend that Condition No. 18 be amended as follows,
- The Developer shall provide adequate lighting at the entrance to the site from the L4016. This lighting shall be designed to consider the safety of road users, nearby residents and the nature of the rural habitat. The lighting shall be fully commissioned prior to use of the facility.*

Reason: In the interests of road safety and to protect the amenities of the area.

6.8. Condition 20 states the following –

The Applicant/Developer to pay to Kildare County Council the sum of €202,500.00 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 5th November 2015 in accordance with Section 48 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with Section 13 of Development Contribution Scheme adopted by Kildare County Council on 5th November 2015.

Note: Please note water and wastewater development contribution charges now form part of the water connection agreement, if applicable, with Irish Water.

Reason: It is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority.

- 6.8.1. The applicant is satisfied that the amount calculated is correct for the area to be backfilled, (13.65ha). However, they are objecting to the terms of the payment schedule, which they believe to be unreasonable. They put forward the argument that the payment of the full amount would leave the PA at a profit in the event that the permissible soil intake is not maximised each year for the duration of the permission. It is also argued that the payment schedule would put an impossible financial burden on the developer in the first year of operation.
- 6.8.2. The argument also states that the contribution has been calculated based on the area to be recovered over a 25-year period and will only be recovered to the design levels if the maximum permissible annual tonnage is reached. As the benefit of the development is commensurate with the progression of the soil recovery operation, and the contribution is commensurate with the area completed / benefit acquired, the payment of the contribution should be phased or set out as regular payments to match the site progress. The applicant has requested that the development contribution be paid annually on a phased basis and has suggested that a quarterly payment of €2,025 per annum be paid to the PA when the facility is in operation.

- 6.8.3. Section 48(10)(b) of the Planning and Development Act 2000, (as amended), allows for an appeal to be brought to the Board where the applicant considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the PA.
- 6.8.4. The Development Contributions for the development were calculated and applied under the Kildare County Council Development Contribution Scheme 2015-2022, which was in place at the time of the application. Since the appeal was lodged, the Kildare County Council Development Contribution Scheme 2023-2029 was adopted. I have reviewed both schemes and the provisions of each scheme, as it relates to the subject development, remain the same. Development contributions were calculated under Section 8(viii) of the 2015 scheme, which is now 8.2.3 of the 2023 scheme. Section 13 of both schemes sets out that General Arrangements for Payment of Development Contributions, and states that, *'50 % of contributions due with regard to planning permission for all development shall be payable on submission of commencement notice and the remaining 50% within 12 months of the first payment due date'*.
- 6.8.5. I note that, in accordance with Section 48(10)(b), the Board is requested to consider whether the terms of the Development Contribution Scheme have been properly applied with respect to the development. Having reviewed the contents of both Development Contribution Schemes, I am satisfied that the terms of the scheme as they relate to the amount and payment of contributions, (as set out in Sections 8.2.3 and 13 respectively), have been applied correctly. Therefore, I recommend that Condition No. 20 be retained as is.

6.9. **Appropriate Assessment**

- 6.9.1. A Stage 1 Screening for Appropriate Assessment and a Natura Impact Statement, (NIS), was submitted with the application. The Screening Assessment identified three European sites that were within the zone of influence for the proposed development, the River Barrow and River Nore SAC (002 162), the Slaney River Valley SAC (000 781), and Holdenstown Bog SAC (001 757). Measures intended to avoid or reduce the harmful effects of the proposed development on any relevant European Site, such as pollution control measures, cannot be considered at the

screening stage. Based on the source-pathway-receptor model, two of the sites were brought forward for a Stage 2 Appropriate Assessment. The Screening Report found that potential pathways exist from the site to the River Barrow and River Nore SAC through surface water, ground water, land and air. A pathway to the Slaney Valley SAC was identified from the site via air which could transport particles from the site. The main threats to the Qualifying Interests for the Holdenstown Bog SAC are from changes to hydrological conditions and land use such as forestry or agriculture. No pathways were identified between the subject site and Holdenstown Bog SAC and this site was screened out.

6.9.2. The NIS concluded that, 'provided the mitigation measures outlined are upheld, no adverse effects are likely from the proposed soil recovery at Graney West, Co. Kildare in combination with other project and plans on the following Natura 2000 sites;

- *River Barrow and River Nore SAC (002 162)*
- *Slaney River Valley SAC (000 781)*.

6.9.3. In accordance with obligations under the Habitats Directives and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans and projects, on a Natura 2000 site; there is a requirement on the Board, as the competent authority in this case, to consider the possible nature conservation implications of the proposed development on the Natura 2000 network, before making a decision, by carrying out appropriate assessment. The first stage of assessment is screening.

6.9.4. Having reviewed the appeal documents provided and submissions, I am satisfied that there is adequate information in relation to the European sites to allow for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

Stage 1 Screening

Description of development

6.9.5. The proposed development is for a waste recovery facility at a worked-out quarry. The area of the site is 19.2ha and the area to backfill is 13.65ha.

Works to be carried out during the construction phase include the following,

- Construction of a new access road in the south-east from the L4016 local road to be used by HGV's. The first 100m will be hot rolled asphalt and the rest will be gravelled.
- A wheel wash facility at the end of the 100m road to include a silt tank, petrol interceptor and rattle bars.
- A permeable car park area for employees and visitors with five parking locations for HGV's
- Re-grading of ground surface in the stockpiling and sorting area
- Extended concrete apron north of the existing buildings on site.
- A concrete pad for refuelling vehicles adjacent to bunded fuel storage area on-site. This area will have a separate drainage system with silt trap, oil interceptor and soakaway.
- Bunded waste inspection / quarantine area on-site, and
- Erection of screening mounds and planting of trees along the north, east and south boundaries.

The operational phase will include the following works,

- The principal activity on the site will be the backfilling of the worked-out quarry voids with inert material to include subsoil, clay, gravels, topsoil, stone and mixtures of such. The materials will be construction and demolition waste and will be sourced from construction sites in the Greater Dublin Area.
- Secondary activities on the site include waste recovery in the form of –
- Intake of topsoil, screening at the proposed screening plant and the resale of the material.
- Intake of gravel and sands, washing at the existing washing plant and resale of the materials.
- Intake of concrete, concrete crushing using crushing equipment mixing with sand and gravel before being fed to the washing plant to form aggregate and the resale of the material, and,

- Intake of garden waste, shredding and composing of this waste within a silage pit draining to an underground effluent storage tank, for use for agricultural land spreading.

Water treatment measures on the site are as follows,

- Septic tank to manage domestic wastewater on the site.
- Surface Water Settlement Lagoons will be in place for managing run-off from site and gravel washing process.
- Effluent tank, (180,000 litres capacity), will be in place to deal with run-off from the concrete hard standing area.
- Silt trap, Class 1 Full Retention Interceptor and Soakaway will be in place to deal with run-off from hard standing areas
- Class 1 Interceptor will be in place serving the car parking area.
- Integrated oil interceptor and silt trap will serve the wheel wash along the site access road.

6.9.6. Water from the settlement lagoons will be pumped back into the washing plant via a pump house and recycled. It was initially planned to allow overflow from the last lagoon to the River Graney via a 300mm diameter concrete pipe. However, this provision was omitted following a request for FI from the PA. In the submission from the applicant it is stated that the 300mm pipe will be grouted to ensure that no overflow water will reach the River Graney, which is categorised as 'At Risk' in the WFD. Surface water also leaves the site by percolation through gravels to ground and underlying ground water. The duration of the construction phase is expected to take 6-9 months and the operational phase will be 25 years.

6.9.7. The project is not directly connected with or necessary to the management of a European Site and therefore, it needs to be determined if the development is likely to have significant effects on any European site. Any potential impacts on European sites from the development would be restricted to the discharge of surface water and air-borne pollution from the site during the construction and operational phases, disturbance of species during construction and/or the loss or fragmentation of supporting habitat for otters which are the Qualifying Interests for the SAC's within the zone of influence of the site.

Likely Impacts

6.9.8. In consideration of the characteristics of the proposed development in terms of its location and nature and scale of works, I consider the following potential impacts as the most likely effects to occur from the development;

Construction Phase:

- The impact on water quality from potential surface water discharges that could result in toxic contamination in the form of chemical or hydrocarbon pollution and non-toxic contamination in the form of silt and sediments.
- Loss of habitat, habitat fragmentation and/or species disturbance due to construction noise and construction of a new road over the River Graney.
- Air borne pollution in the form of dust and emissions from vehicles.

Operational Phase:

- Contamination from surface water runoff and storm-water discharges during the operational stage.
- Increase in sediment load to the existing watercourses from surface water runoff.
- Pollution of the watercourses and groundwater from hydrocarbons and other chemicals from spillages and/or discharges.
- Loss of habitat and habitat fragmentation due to the new access road over the River Graney and across an open field.
- Air borne pollution in the form of dust and emissions from vehicles.

European Sites

The closest European sites are,

- River Barrow and River Nore SAC (Site Code 002 162) – approximately 2.5km to the north-west of the site (hydrological distance)
- Slaney River Valley SAC (Site Code 000 781) – approximately 7km to the east of the site.
- Holdenstown Bog SAC (Site Code 001 757) – approximately 7km to the north-east of the site.

- 6.9.9. The potential for impacts on the closest European sites would be restricted to surface and ground water pollution and air borne pollution in the form of particulate matter, (PM) and chemical emissions. There is an indirect surface water connection between the subject site and the River Barrow and River Nore SAC via a small stream that runs along the western boundary of the site. This stream is a tributary to the River Graney which feeds into the River Lerr, which in turn flows into the River Barrow and River Nore SAC. The River Barrow and River Nore SAC is also partly located within the same groundwater body as the subject site which allows for the potential diffusion of substances within the groundwater.
- 6.9.10. Dust and air borne vehicle emissions can travel up to 10km and depending on weather conditions, could potentially impact on Annex 1 habitats. Prevailing winds at the site of the development is south, south-east and west, north-west. The River Barrow and River Nore SAC is located to the north-west, west and south-west of the site and the Slaney River Valley SAC is located to the north-east, east and south-east of the site. In consideration of the location and distances between the subject site and the SAC's a pathway exists for air borne pollutants to both sites.
- 6.9.11. There are no groundwater or surface water connections between the subject site and the Slaney River Valley SAC and the Holdenstown Bog SAC. Impacts via land and air on Holdenstown Bog SAC are not anticipated given the distance from the site to this SAC and the prevailing wind directions at the location of the subject site. As no pathways exist between the subject site and the Holdenstown Bog SAC, this site can be screened out.
- 6.9.12. The Qualifying Interests and Conservation Objectives for the designated sites identified through the source-pathway-receptor model are outlined in the table below.

The River Barrow and River Nore SAC	
Ref. IE002162	
Distance from site; c. 2.5km to the north-west of the site via hydrological link.	
Qualifying Interests	Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Reefs [1170] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) [1330]

	<p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410] Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation [3260] European dry heaths [4030] Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430] Petrifying springs with tufa formation (<i>Cratoneurion</i>) [7220] Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles [91A0] Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0] <i>Vertigo moulinsiana</i> (Desmoulin's Whorl Snail) [1016] <i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029] <i>Austropotamobius pallipes</i> (White-clawed Crayfish) [1092] <i>Petromyzon marinus</i> (Sea Lamprey) [1095] <i>Lampetra planeri</i> (Brook Lamprey) [1096] <i>Lampetra fluviatilis</i> (River Lamprey) [1099] <i>Alosa fallax fallax</i> (Twait Shad) [1103] <i>Salmo salar</i> (Salmon) [1106] <i>Lutra lutra</i> (Otter) [1355] <i>Trichomanes speciosum</i> (Killarney Fern) [1421] <i>Margaritifera durrovensis</i> (Nore Pearl Mussel) [1990]</p>
Conservation Objectives	To maintain or restore the favourable conservation condition of the Annex I habitats and/or the Annex II species for which the SAC has been selected.
The Slaney River Valley SAC	
Ref. IE000781	
Distance from Site; c. 7km to the east of the site.	
Qualifying Interests	<p>Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) [1330] Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p>

	<p>Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation [3260]</p> <p>Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]</p> <p>Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</p> <p>Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]</p> <p>Petromyzon marinus (Sea Lamprey) [1095]</p> <p>Lampetra planeri (Brook Lamprey) [1096]</p> <p>Lampetra fluviatilis (River Lamprey) [1099]</p> <p>Alosa fallax fallax (Twaité Shad) [1103]</p> <p>Salmo salar (Salmon) [1106]</p> <p>Lutra lutra (Otter) [1355]</p> <p>Phoca vitulina (Harbour Seal) [1365]</p>
Conservation Objectives	To maintain or restore the favourable conservation condition of the Annex I habitats and/or the Annex II species for which the SAC has been selected.

6.9.13. The potential impacts that could cause a significant effect on the Qualifying Interests, (QI's) of the River Barrow and River Nore SAC during the construction stage of the project are via surface water pathways, groundwater pathways and land and air pathways. Surface water pathways can impact on surface water quality and habitat quality inside and along the River Barrow. This SAC has a number of QI's that are sensitive to surface water quality. The QI's that have the potential to occur in the vicinity of the site and that could be impacted by water quality include, Alluvial Forests, Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation, White-clawed Crayfish, Sea Lamprey, Brook Lamprey, River Lamprey, Atlantic Salmon, Otter and Freshwater Pearl Mussel.

6.9.14. Groundwater pathways can impact on groundwater quality and the quality of groundwater dependent habitats. Land and air pathways can impact by release or discharges of sediment or chemicals to surface or groundwater. The proposed development could also cause a significant effect on the QI's of the River Slaney

Valley SAC via land and air pathways as airborne particles could impact on water quality in this European site.

6.9.15. The QI's for both SAC's with pathways between the sites include species and habitats that are very sensitive to changes in surface water quality.

Likely Impacts – Construction Stage

6.9.16. The construction stage of the project will comprise the following works,

- Construction of a new access road in the south-east from the L4016 local road to be used by HGV's. The first 100m will be hot rolled asphalt and the rest will be gravelled.
- A wheel wash facility at the end of the 100m road to include a silt tank, petrol interceptor and rattle bars.
- A permeable car park area for employees and visitors with five parking locations for HGV's
- Re-grading of ground surface in the stockpiling and sorting area
- Extended concrete apron north of the existing buildings on site.
- A concrete pad for refuelling vehicles adjacent to bunded fuel storage area on-site. This area will have a separate drainage system with silt trap, oil interceptor and soakaway.
- Bunded waste inspection / quarantine area on-site, and
- Erection of screening mounds and planting of trees along the north, east and south boundaries.

The likely impacts on the SAC's during the construction phase are,

- Pollution of surface waters from spills or leaks
- Habitat fragmentation

6.9.17. Spills or leaks on the site could result in hydrocarbons or other pollutants entering the River Barrow and River Nore SAC. There is a particular risk of surface water pollutants entering the watercourse during the construction of the new access road and the bridge over the River Graney. The release of hydrocarbons or other pollutants which has the potential to impact on the water quality of the River Graney

and River Lerr and may cause eutrophication, increased algal and macrophyte growth, increased turbidity and increased sedimentation of the river substrate. This could impact on the floating river vegetation or alluvial woodlands as well as the macroinvertebrate communities. It would also have an impact on the water and substrate quality requirements of Salmon, lamprey, White-clawed Crayfish and Freshwater Pearl Mussel.

6.9.18. Evidence of otters was found along the River Graney and in close proximity to the location of the bridge over the river for the new access road. The new bridge could impact on otter populations by placing a barrier to movement and causing habitat fragmentation. Vehicles using the access road could also cause otter mortality if otters try to cross the road.

Likely Impacts - Operational Phase

The operational phase of the project will include the following works,

- Backfilling of the worked-out quarry voids with inert material to include subsoil, clay, gravels, topsoil, stone and mixtures of such. The materials will be construction and demolition waste and will be sourced from construction sites in the Greater Dublin Area.
- Secondary activities on the site include waste recovery in the form of –
- Intake of topsoil, screening at the proposed screening plant and the resale of the material.
- Intake of gravel and sands, washing at the existing washing plant and resale of the materials.
- Intake of concrete, concrete crushing using crushing equipment mixing with sand and gravel before being fed to the washing plant to form aggregate and the resale of the material, and,
- Intake of garden waste, shredding and composing of this waste within a silage pit draining to an underground effluent storage tank, for use for agricultural land spreading.

The likely impacts on the SAC's during the operational stage include the following,

- Pollution of surface waters from spills or leaks

- Increased sediment load from surface water runoff entering the River Barrow and River Nore SAC.
- Dust release spread by wind and air.

6.9.19. During the operational period, soil and stones will be used to backfill the quarry voids. This could impact on surface water as a result of surface water runoff from heavy rainfall which could increase sediment load to the watercourses. Spills or leaks from plant or fuel storage areas could also result in the pollution of surface waters by hydrocarbons or other chemicals. The release of sediments or other forms of pollution has the potential to impact on the water quality of the River Graney and River Lerr.

6.9.20. Dust generating activities during the operational stage include the haulage of materials to and from the site, internal material haulage and handling, infilling and site restoration, C&D material processing and stockpiling. Dust from the works carried out as a result of the development and vehicular emissions from plant and traffic can potentially have a significant impact on the ambient air quality of the SAC and could affect the floating river vegetation and alluvial forests by increased sedimentation and settle on the leaves, thus reducing their ability for photosynthesis.

6.9.21. Given the nature of the proposed works and the sensitivities of the QI's that are most likely to be impacted by the development, I consider that the potential impacts on surface water from the development proposal is the most significant threat to the Conservation Objectives, (CO's) of the SAC's.

6.9.22. The subject site lies within the Water Framework Directive (WFD) Barrow catchment and the sub-catchment of the River Lerr, (Lerr_SC_010 (EPA 2020)). The River Graney is located approximately 100m to the south of the site and flows in an east-west direction to connect with the River Lerr.

6.9.23. Within the WFD, the Graney River is classified as having a 'Moderate' overall status and a risk category of 1a – 'at risk' of not achieving 'Good' status by 2015, (WFD.ie website and taken from the first round of River Basin Management Plans, (RBMP) 2009-2015). The Lerr River has a 'Poor to Moderate' status and is also at risk. The Catchments.ie website has since been updated with the second round of RBMP's and the Lerr River remains 'At Risk' due to agriculture and hydromorphology pressures.

6.9.24. Within the RBMP for Ireland 2018-2021, the Graney-Lerr area has been selected as a Priority Area for Action. The Local Area Waters Programme will work with other public bodies and communities to improve water quality in these areas between 2018 and 2021. The initial desk-based assessment showed a mix of urban and rural pressures in the catchment causing elevated levels of nitrates and phosphates along with sediment issues. Any deterioration of the water quality in the River Graney and/or the River Lerr could result in a significant impact on the River Barrow and River Nore SAC.

In-Combination Impacts

There are no strategies, plans or objectives in the KCDP that are likely to result in significant in-combination effects. Recent planning history in proximity to the site includes the following,

PA Ref	Date Granted	Development	Distance from site
18/400	23/05/2018	Farm buildings including milking facility and underground effluent tank.	900m
19/257	09/03/2020	Agricultural grain store and ancillary works	0.3km

Based on the scale and location of the developments permitted, in-combination effects are unlikely.

Conclusion – Screening Determination

6.9.25. There is an indirect hydrological connection between the subject site and the River Barrow and River Nore SAC via the River Graney. A pathway exists for air borne particles and/or emissions to the River Barrow and River Nore SAC and the Slaney River Valley SAC given the proximity and location of the site and the direction of the prevailing winds at the site location. Based on the source, pathway, receptor model this creates the potential for significant impacts on the designated sites in the absence of mitigation measures.

6.9.26. Following the screening process, it has been determined that Appropriate Assessment is required as it cannot be excluded on the basis of objective information that the proposed development [insert name] individually or in combination with other plans or projects will have a significant effect on the following European sites (i.e. there is the *possibility* of significant effect):

- The River Barrow and River Nore SAC, (Site Code - 000 162)
- Slaney River Valley SAC, (Site Code - 000 781).

The possibility of significant effects on other European sites has been excluded on the basis of objective information. The following European sites have been screened out for the need for appropriate assessment.

- Holdenstown Bog SAC (Site Code – 001 757).

Stage 2 – Appropriate Assessment

6.9.27. The requirements of Article 6(3) as related to appropriate assessment of a project under part XAB, sections 177U and 177V of the Planning and Development Act 2000 (as amended) are considered fully in this section. The areas addressed in this section are as follows:

- Compliance with Article 6(3) of the EU Habitats Directive
- Screening the need for appropriate assessment
- The Natura Impact Statement and associated documents
- Appropriate assessment of implications of the proposed development on the integrity each European site

6.9.28. The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal

will not adversely affect the integrity of the European site before consent can be given.

6.9.29. The proposed development is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).

6.9.30. Following the screening process, it has been determined that Appropriate Assessment is required as it cannot be excluded on the basis of objective information that the proposed development at Graney West, County Kildare, individually or in-combination with other plans or projects will have a significant effect on the following European sites (i.e. there is the *possibility* of significant effect):

- The River Barrow and River Nore SAC, (Site Code - 000 162)
- Slaney River Valley SAC, (Site Code - 000 781).

6.9.31. The possibility of significant effects on other European sites has been excluded on the basis of objective information. The following European sites have been screened out for the need for appropriate assessment.

- Holdenstown Bog SAC (Site Code 001 757).

6.9.32. Measures intended to reduce or avoid significant effects have not been considered in the screening process.

6.9.33. The relevant sites for Stage 2 Appropriate Assessment are the River Barrow and River Nore SAC and the Slaney River Valley SAC. The main aspects of the development that could adversely affect the conservation objectives of this European sites relate to: -

- Potential release of pollutants from waste material into the water through surface water drainage and groundwater which could affect some of the designated features of the River Barrow and River Nore SAC.
- Potential increase of sedimentation load into the water through surface water drainage which could affect some of the designated features of the River Barrow and River Nore SAC.

- Potential dust release spread by wind and air could affect some of the designated features of the River Barrow and River Nore SAC and the Slaney River Valley SAC.
- Fragmentation of otter habitat due to the construction of a new road which will cross the River Graney and the potential for mortalities due to traffic. Otter is a QI of the River Barrow and River Nore SAC.

6.9.34. A Natura Impact Statement was submitted with the application. It examines and assesses potential adverse effects of the proposed development on the European Sites brought forward for Stage 2 assessment and was prepared by using desk studies and field surveys which were carried out on three different occasions. An initial ecological walkover was carried out in January 2019. A second site visit was carried out in March 2019 and a ground level assessment was carried out for bat roost suitability. The site was also surveyed for otter, badger, sand martin and invasive species. A second sand martin survey was carried out in June 2019.

6.9.35. The NIS concluded that, *'The development site lies 2km from the River Barrow and River Nore SAC and has surface water connection to the SAC via a surface water drain which is discharging to the River Graney. River Graney connects to the River Lerr further downstream, which is part of the SAC....The potential impacts from the proposed project could arise during construction and operation and relates to potential pollution of surface waters caused by runoff from bare soil and accidental spillage of diesel and oil, which could impact on Annex 1 habitats and species. Habitat fragmentation and potential kill of individuals could impact on otters due to the construction of a new access road crossing the River Graney which has been identified to be used by otter'*.

6.9.36. *'Slaney River Valley SAC lies approximately 7km to the east of the proposed development site and is within the Zol for air pathways...The potential impacts from the proposed project could arise during operation and relates to dust generating activities...This could impact on the Annex 1 habitats within the Zol'*.

6.9.37. *'Mitigation measures have been proposed for the area of the site and for inclusion in pollution control measures, dust control measures, and the implementation of safe otter passage under the access road crossing River Graney, ensuring that no adverse effects in relation to surface water pollution, groundwater pollution or habitat*

fragmentation occur. It is concluded that provided the mitigation measures outlined are upheld, no adverse effects are likely from the proposed soil recovery facility at Graney West, Co.Kildare in combination with other project and plans on the following Natura 2000 sites:

- *River Barrow and River Nore SAC (002 162)*
- *Slaney River Valley SAC (000 781)*

6.9.38. Having reviewed the documents, submissions and consultations with the NPWS etc, I am satisfied that the information allows for a complete assessment of any adverse effects of the development, on the conservation objectives of the following European sites alone, or in combination with other plans and projects:

- River Barrow and River Nore SAC (002 162)
- Slaney River Valley SAC (000 781)

Appropriate Assessment Implications of the Proposed Development

6.9.39. The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European sites using the best scientific knowledge in the field. All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed.

6.9.40. The main aspects of the proposed development that could adversely affect the conservation objectives of the European sites include;

- Potential release of pollutants from waste material into the water through surface water drainage and groundwater during the construction and operation stage.
- Potential increase of sedimentation load into the water through surface water drainage during the construction and operation stage.
- Potential dust release spread by wind and air caused by traffic movements and emissions, and the haulage and deposition of waste materials within and outside of the site.

- Fragmentation of otter habitat due to the construction of a new road which will cross the River Graney and the potential for mortalities due to traffic on the road. (Otters are a QI for both European Sites).

River Barrow and River Nore SAC

6.9.41. There is an indirect hydrological connection between the subject site and the River Barrow and River Nore SAC via the River Graney and River Lerr. In the absence of standard control measures or mitigation measures there is a risk that pollution in the form of sediments, hydrocarbons or other chemicals could enter the watercourse. The release of dust from operations on the site could also contribute to water-based pollution. Any decrease in the water quality could have a potentially negative impact on the habitats and species within the SAC in terms of loss of habitat and species which could result in a decline in the qualifying species in the designated sites. Threats to the SAC include the pollution of surface waters (limnic, terrestrial, marine and brackish), changes in abiotic conditions and sand and gravel quarries.

6.9.42. The QI's in the River Barrow and River Nore SAC that have the potential to occur in the vicinity of the site and that could be impacted by water quality are listed in the table below, along with their conservation objectives.

Qualifying Interest	Conservation Objective
Alluvial Forests	To restore the favourable conservation condition.
Water courses of plain to montane levels,	To maintain the favourable conservation condition.
White-clawed Crayfish,	To maintain the favourable conservation condition.
Sea Lamprey,	To restore the favourable conservation condition.
Brook Lamprey,	To restore the favourable conservation condition.
River Lamprey	To restore the favourable conservation condition.
Atlantic Salmon,	To restore the favourable conservation condition.
Otter	To restore the favourable conservation condition.

Freshwater Pearl Mussel	Under review.
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Favourable conservation status of a habitat is achieved when:

- its natural range, and area it covers within that range, are stable or increasing, and,
- the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and,
- the conservation status of its typical species is favourable.

The favourable conservation status of a species is achieved when:

- population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and,
- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and,
- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.

6.9.43. Spills or leaks on the site could result in hydrocarbons or other pollutants entering the River Barrow and River Nore SAC. There is a particular risk of surface water pollutants entering the watercourse during the construction of the new access road and the bridge over the River Graney. The release of hydrocarbons or other pollutants which has the potential to impact on the water quality of the River Graney and River Lerr and may cause eutrophication, increased algal and macrophyte growth, increased turbidity and increased sedimentation of the river substrate. This could impact on the floating river vegetation in the plain to montane levels or alluvial woodlands as well as the macroinvertebrate communities. It would also have an impact on the water and substrate quality requirements of Salmon, Lamprey, White-clawed Crayfish and Freshwater Pearl Mussel. The Water courses of plain to montane levels are also particularly sensitive to changes in water flows from discharges.

- 6.9.44. The construction of the new road from the L4016 has the potential to cause habitat fragmentation for otters, which are a QI for the River Barrow and River Nore SAC. The new road will cut across an open field and cross the River Graney, where evidence of otters has been found. This could restrict migration or result in mortality of individuals.
- 6.9.45. I am satisfied that there are no developments or extant permissions that would result in cumulative impacts.

Slaney River Valley SAC

- 6.9.46. There is no hydrological connection between the subject site and the Slaney River Valley SAC. There is a potential for air-borne pollutants to impact on this SAC given its location to the north-east and south-east of the site and that the prevailing wind is south to south-west. Dust from works during the operation and vehicular emissions from operation traffic can potentially have a significant impact on the ambient air quality of the SAC and affect the floating river vegetation and alluvial forests by increased sedimentation and settle on the leaves and reduce their ability for photosynthesis.
- 6.9.47. The QI's in the Slaney River Valley SAC that have the potential to be impacted by the impact of dust and air-borne pollutants are listed in the table below, along with their conservation objectives.

Qualifying Interest	Conservation Objective
Alluvial Forests	To restore the favourable conservation condition.
Water courses of plain to montane levels	To maintain the favourable conservation condition.

Proposed Mitigation Measures

- 6.9.48. Mitigation measures are set out in Section 6.3 of the NIS. The measures relate to both the construction and operational phases of the development. They include a number of best practice construction methods that would normally be employed during the construction and operational phases of any well managed development of

this nature. All mitigation measures outlined in the NIS will be included in the Construction and Environment Management Plan which will be submitted to the PA for agreement prior to commencement. Construction method statements will also be prepared and submitted to the PA. The extensive list of measures mainly relate to the management of pollution through surface water runoff and dust from the operations on site. Additional measures to reduce the impact of dust include the planting of a tree line along the site boundary and the installation of berms to block dust. Measures that specifically address the impact of the proposal on otters include the installation of ledges under the access road where it crosses the River Graney to allow the safe passage of otters and the provision of a mammal resistant fence along a 50-100m long section of the road where it crosses the river to prevent animals from crossing the road.

- 6.9.49. I have reviewed the mitigation measures proposed and I am satisfied that they will be sufficient to prevent any significant impact on the qualifying interests and conservation objectives of the European sites from any potential pollutants from surface water runoff, groundwater or dust.

In-combination Effects

- 6.9.50. There are no strategies, plans or objectives in the KCDP that are likely to result in significant in-combination effects. Recent planning history in proximity to the site includes two extant permissions for agricultural projects. Given the nature, scale and location of these projects, and the proposed development, I am satisfied that there will not be any significant cumulative effects from the proposed development and the development permitted under the extant permissions.

Conclusion

- 6.9.51. The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000 as amended. Following an Appropriate Assessment, it has been determined that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European sites No. IE002162 and No. IE000781, or any other European site, in view of the sites Conservation Objectives by virtue of,

- The distance from the subject site to the SAC,

- The nature and scale of the development and,
- The mitigation measures to prevent surface water runoff, air-borne particles and habitat fragmentation.

6.9.52. This conclusion is based on a complete assessment of all aspects of the proposed project alone (and in combination with other projects) including possible construction related pollution and surface water runoff during the operational phase.

7.0 Recommendation

7.1. I recommend that,

- Condition No. 3 is Retained,
- Condition No. 6(a) is Amended,
- Condition No. 10 is Removed,
- Condition No. 12 is Retained,
- Condition No. 13 is Amended,
- Condition No. 18 is Amended and,
- Condition No. 20 is Retained and Amended.

8.0 Reasons and Considerations

8.1. Having regard to the nature of the conditions the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of Section 139 of the Planning and Development Act, 2000, as amended:

8.2. To **RETAIN** Condition No. 3 as follows for the reasons and considerations set out hereunder:

Condition No. 3 states that: All the environmental and construction mitigation and monitoring measures, set out in the Environmental Impact Assessment Report and

Natura Impact Statement, shall be implemented in full in accordance with the timelines set out, except as may otherwise be required in any Waste Licence issued by the Environmental Protection Agency in respect of the proposed development or as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity and to mitigate the environmental effects of the proposed development.

Reasons and Considerations (1)

The proposed development will be subject to an EPA licence which will regulate emissions from the development. This condition is necessary to regulate the construction of the project and to ensure that the mitigation measures contained in the EIAR and NIS to protect biodiversity and protected flora and fauna are implemented. The condition acknowledged also acknowledges that the conditions of the EPA licence will take precedence over the planning condition with regard to specific emissions.

- 8.3. To **AMEND** Condition No. 6(a) as follows for the reasons and considerations set out hereunder. Condition 6(b) and 6(c) shall be retained as is.

Condition No. 6(a): The Developer shall provide a closed loop wheel wash system to the satisfaction of the Planning Authority. A plan should be prepared by the applicant for the management of waste from the wheel wash system for written agreement with the PA. The plan should set out how the hazardous and non-hazardous waste will be disposed of.

(b) A waste quarantine area shall be provided at the site.

(c) A weighbridge shall be provided at the site.

Reason: In the interest of clarity and public health and environmental sustainability.

Reasons and Considerations (2)

Emissions from the facility will be regulated through an EPA licence. In the absence of any conditions to regulate hazardous or contaminated material for the site, it is considered reasonable that the applicant prepare a plan for the removal of

hazardous waste from the site in order to ensure proper disposal and to prevent contamination.

- 8.4. To **REMOVE** Condition No. 10 for the reasons and considerations set out hereunder:

Reasons and Considerations (3)

- 8.5. It is considered that Condition No. 10 is not in accordance with the guidance contained in the Development Management Guidelines, (2007), and in the OPR Practice Note PN03 – Planning Conditions, as it requires the applicant to carry out development on lands outside of their control prior to the commencement of development. Such conditions are unenforceable and should not be imposed. It is also considered that the application of a Section 48(2)(c) contribution in this instance would not be appropriate as it would result in a duplication of contributions.

- 8.6. To **RETAIN** Condition No. 12 as follows for the reasons and considerations set out hereunder:

Condition No. 12 states that: *Prior to use as a Material Recovery Facility, the Developer shall construct a new access route generally in accordance with drawings G1210-02 and G1210-04 received by the Planning Authority on 8th February 2021. The works shall include the following: HRA surfacing at the junction with the L4016; a wheel wash, oil interceptor; signage and shuttle light system.*

Reason: In the interest of road safety.

Reasons and Considerations (4)

It is considered that Condition No. 12 is reasonable and does not require the applicant to enter into any onerous works that would be over and beyond what was proposed in the application.

- 8.7. To **AMEND** Condition No. 13 as follows for the reasons and considerations set out hereunder.

Condition No. 13: *The Developer is required to implement the recommendations contained in the Stage 1 and Stage 1/2 Road Safety Audits dated May 2020 and*

January 2021 regarding the proposed access onto the L4016 and the internal access road.

Reason: In the interest of road safety.

Reasons and Considerations (5)

It is considered that, given the nature and scale of the proposed development, that the implementation of the measures outlined in the Stage 1 and Stage 1/2 Road Safety Audits will sufficiently address safety measures at the new junction with the L4016.

- 8.8. To **AMEND** Condition No. 18 as follows for the reasons and considerations set out hereunder.

Condition No. 18: The Developer shall provide adequate lighting at the entrance to the site from the L4016. This lighting shall be designed to consider the safety of road users, nearby residents and the nature of the rural habitat. The lighting shall be fully commissioned prior to use of the facility.

Reason: In the interest of road safety and to protect the amenities of the area.

Reasons and Considerations (6)

It is considered that the requirement for public lighting is limited, given the nature and scale of the development and its location in a rural setting and in consideration of the mitigation measures outlined in the EIAR and the NIS regarding protected species in the area. In the interests of road safety some lighting should be considered at the new junction. Lighting within and around the site will be guided by the relevant HSA legislation and guidance and will also be considered within the context of the mitigation measures outlined in the EIAR and NIS regarding protected species within the area.

- 8.9. To **RETAIN and AMEND** Condition No. 20 as follows for the reasons and considerations set out hereunder:

Condition No. 20 states that: The Applicant/Developer to pay to Kildare County Council the sum of €202,500.00 being the appropriate contribution to be applied to

this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 5th November 2015 in accordance with Section 48 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with Section 13 of Development Contribution Scheme adopted by Kildare County Council on the 19th December 2022.

Note: Please note water and wastewater development contribution charges now form part of the water connection agreement, if applicable, with Irish Water.

Reason: It is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority.

Reasons and Considerations (7)

- 8.9.1. It is considered that the terms of the Kildare County Council Development Contribution Scheme 2023-2029 have been properly applied with regard to Sections 8.2.3 and 13 of the Scheme which relate to the level of contributions applicable to the scheme and to the payment of contributions under the Scheme. The Condition should be amended to reference the 2023-2029 Development Contribution Scheme.

Elaine Sullivan
Planning Inspector

30th January 2023